Central Law Journal.

ESTABLISHED JANUARY, 1874.

VOL. 35 ST. LOUIS, MO., AUGUST [illegible] No. 7

Public School Library
Chestnut st

ELECTRICITY FROM A LEGAL STANDPOINT.

KEASBEY

—ON—

Electric Wires in Streets and Highways.

A Discussion of the Law relating to the Use of Streets and Public Highways for Lines of Electric Wires, Overhead or Underground.

By EDWARD Q. KEASBEY, Esq.

THE FOLLOWING ARE THE SUBJECTS OF THE CHAPTERS:

I. INTRODUCTORY.—Legal Relations of the Wires to the Highways.—Public and Private Rights.

II. BY WHAT AUTHORITY the Street may be Used for Electric Wires.—The EXTENT OF LEGISLATIVE CONTROL over Streets, and the Limits of MUNICIPAL AUTHORITY.

III. MUNICIPAL CONTROL.—Grants made Subject to CONSENT OF LOCAL AUTHORITIES.—HOW THAT CONSENT may be Given, and what, if any, CONDITIONS may be Imposed.

IV. MUNICIPAL CONTROL.—POLICE REGULATIONS.—Extent and Scope of Police Powers.—License Fees.—Regulations of FARES, TOLLS, etc.

V. POLES AND WIRES as an OBSTRUCTION to the Highway.—How far they are Justified by a GRANT OF PERMISSION.

VI. UNDERGROUND WIRES.—Power to Compel Wires to be Put Underground.—Right of the Companies to Insist on Putting their Wires Underground.

VII. RIGHTS OF THE OWNERS OF ABUTTING LANDS with Reference to the Use of the Streets for Electric Wires.

VIII. RIGHTS OF THE ABUTTING OWNER with Respect to the TELEGRAPH AND TELEPHONE.

IX. RIGHTS OF ABUTTING OWNERS with Respect to ELECTRIC LIGHT WIRES for Public Lighting, and for LIGHTING OF PRIVATE HOUSES.—Poles and Wires an Underground Cables.

X. RIGHTS OF ABUTTING OWNERS with Respect to the ELECTRIC RAILWAY.—Comparison with other Railways in the Streets.—Cases on the Rights of Abutting Owners with Respect to STEAM RAILROADS, HORSE RAILROADS, CABLE ROADS and STEAM DUMMY ROADS.—PRINCIPLE GOVERNING all These.—Application of it to the ELECTRIC RAILWAY.

XI. CONDEMNATION OF PRIVATE RIGHTS FOR LINES OF ELECTRIC WIRES.—If Private Rights are Affected, or Consent is Required by Statute, Condemnation is Necessary.—Requirements of Petition to Condemn.

XII. TELEGRAPHS ON POST ROADS.—Right of all Telegraph Companies to Use Post Roads of the United States.

XIII. TELEGRAPH LINES ALONG RAILROADS.—Exclusive Privileges.—Use of Right-of-Way.—Compensation to Abutting Owner for New Use, etc.

XIV. CONFLICT BETWEEN THE TELEPHONE COMPANIES and the ELECTRIC LIGHT and ELECTRIC RAILWAY COMPANIES.—Interference with Telephone Service.

XV. NEGLIGENT CONSTRUCTION.—INJURIES FROM UNAUTHORIZED OR DEFECTIVE POLES AND WIRES.—WIRES HANGING TOO LOW.—DANGEROUS CURRENTS, etc.

The discussion includes the RIGHTS OF THE PUBLIC and OWNERS OF ABUTTING LAND with respect to the OCCUPATION OF CITY STREETS AND COUNTRY ROADS for the TELEGRAPH and TELEPHONE LINES, ELECTRIC LIGHT WIRES, and the OVERHEAD WIRES of the ELECTRIC RAILWAY; also the rights of TELEGRAPH COMPANIES under the ACT OF CONGRESS and at COMMON LAW TO STRETCH THEIR WIRES ALONG THE RAILROADS. The author discusses the underlying principles, and also gives a full account of all the cases (some of which have never been reported) bearing directly upon the subject of electric wires in the streets.

ONE VOLUME, OCTAVO IN SIZE, $3.50 NET.

CALLAGHAN & COMPANY,

CHICAGO.

Central Law Journal.

A LEGAL WEEKLY NEWSPAPER.

Published by

Central Law Journal Company,

919 OLIVE ST., ST. LOUIS, MO.

To whom all communication should be addressed.

Subscription price, FIVE DOLLARS per annum, in advance. Single numbers, TWENTY-FIVE CENTS.

Copyright 1892, by CENTRAL LAW JOURNAL COMPANY.
Entered at the post-office, St. Louis, Mo., as second-class matter.

CONTENTS.

EDITORIALS.

Preference in Assignment for Benefit of Creditors 121
Power of Telephone Company to Refuse its Service to Telegraph Company, . . . 121

NOTES OF RECENT DECISIONS.

Constitutional Law—Taxation — Interstate Commerce, ... 121
Contract to make a Will, ... 123

LEADING ARTICLE.

The Liability of Charitable Corporations for Torts of their Employees. By Lewis Hochheimer, 125

LEADING CASE.

Certificate of Deposit—Negotiability. First Nat. Bank of Farmersville v. Greenville Nat. Bank, Supreme Court of Texas, March 18, 1892 (with note), ... 126

BOOKS RECEIVED, ... 131
HUMORS OF THE LAW, ... 131
WEEKLY DIGEST OF CURRENT OPINIONS, . . 131
DIGESTS OF MISSOURI COURTS OF APPEAL, . . 159

Union Law School

OF CHICAGO.

Fall Term opens September 15, 1892. Send for circular.

M. D. EWELL, Dean,
97 Clark St., CHICAGO, ILL.

Kerr on Receivers.

1 Vol. 8vo. $4.50.

SECOND AMERICAN EDITION WITH NOTES.

By GEO. TUCKER BISPHAM, Esq.

[*From the Albany Law Journal.*]

Mr. Kerr has achieved well deserved success, and his treatise is regarded in England as standard, and, so far as a text-book can be, authoritative.

KAY & BRO., Publishers, • Philadelphia, Pa.

Attorneys, Note—The latest and without exception the best work of its kind is WAIT'S ACTIONS AND DEFENSES BROUGHT DOWN TO 1892. *Complete set, including General Index; in all 9 Volumes, $45.00 net.*

Those having the first seven volumes may bring their sets to date by purchasing our NEW VOLUME 8, AUTHORIZED EDITION, *to be issued soon. Price, $6.50 net.* We shall also issue a new *General Index, 1 vol., covering the 7 vols. and the new vol. 8. Price, $3.50 net.* The authorized edition will bear our imprint on the title-page.

Order of the Publishers,

THE WAIT PUBLISHING COMPANY,
Lakeside Building, **Chicago, Ills.**

☞ We buy libraries and deal in law books generally. Get our prices.

English Law Reports at a Bargain. Order at once

Atkyn's Chancery Reports, Am. Ed., 3 Vols.....$2 25
" " " London Ed., 3 Vols..... 2 25
" " " " " 1781, Vols. 2 and 3..... 1 00
Andrews' K. B. Reports, Dublin, 1791..... 2 50
Burrow's K. B. Reports, Am. Ed., 5 Vols..... 2 50
Brown's Chancery Reports, 4 Vols..... 4 00
Broderip & Bingham's Reports, London, 1820, 2 Vols. 1 00
W. Blackstone's Reports, 2 Vols., Dublin, 1789..... 2 00
H. Blankstone's Reports, 2 Vols., 1st Am. Ed., 1806.. 1 00
H. Blackstone's Reports, 2 Vols., 3d Ed., Dublin, 1800 1 00
Ball & Beatty's Reports, Chancery, London, 2 Vols. 1 00
Barnewall & Alderson's K. B. Reports, 1818-1820, first 4 Vols..... 2 00
Bosanquet & Puller's Reports, Am. Ed., 5 Vols..... 2 50
Croke's Reports, Dublin, 1791, 5th Ed., 3 Vols..... 1 50
Croke's Reports, 4th Ed., London, 1790, 3 Vols. in 4.. 2 00
Cooper's Chancery Reports, 1st Am. Ed., 1824, 1 Vol. 1 00
Cases in Equity, 3d Ed., Vol. 1, Dublin, 1792..... 50
Coke's Reports, 13 parts in 7 books, Dublin, 1778.... 6 50
Coke's Reps., 13 parts in 7 books in the savory, 1738, 6 50
Campbell's Nisi Prius and K. B. and C. P. Reports, Am. Ed., 4 Vols..... 2 00
Campbell's Nisi Prius and K. B. Reps, 1st 2 Vols., 1809, 1 00
Cooper's Cases in Chancery, London, 1815, 1 Vol.... 50
Cases in Chancery, 1828, New York, 1 Vol..... 2 00
Cox's Chancery Cases, 2 Vols., last Am. Ed., 1824... 4 00
Cases in Equity, Time of Talbot, 3d Ed., London, 1792, 50
Cases in Equity, Time of Talbot, 3d Ed., Dublin, 1793 50
Cowper's K. B. Reports, Dublin, Ed., 1 Vol..... 50
Cowper's K. B. Reports, 1st Am. Ed., 2 Vols., 1809... 1 00
Comyn's Digest, 8 Vols., 1st American from the 5th London Ed., 1824..... 8 00
Comyn's Digest, 4th Ed., Dublin, 6 Vols., 1793..... 3 00
Comyn's Reports, K. C., Common Pleas and Exchequer, 2d Ed., Dublin, 1791, 1 Vol..... 1 50
Craig & Phillips' Chancery Reports, Vol. 1, London, 1842..... 1 00
Durnford & East's Reps, 8 Vols., 3d Ed , Dublin, 1791, 4 00
Dowling's K. B. Reports, London Ed., 1833, 2 Vols... 1 50
Deacon & Chitty's Reports Cases in Bankrupty, 4 Vols., London, 1833..... 4 00
Douglass' K. B. Reports, 2 Vols., 1807, Am. Ed..... 1 00
East's K. B. Reports, 16 Vols., mixed Ed 8 00
East's Pleas of the Crown, Vol. 1, 1806, Am. Ed..... 1 00
East's K. B. Reps., 16 Vols. in 8 books, Am. Notes... 8 00
Espinasse's Nisi Prius Reports, 5 Vols. in 3 books, Day Ed., Hartford, 1808..... 2 50

Books in good second-hand order. Address
WILLIAMSON LAW BOOK CO., ROCHESTER, N. Y.

Northwestern University

LAW SCHOOL, CHICAGO, ILL.

Session opens September 22, at 40 Dearborn Street, Chicago. Hon. Henry W. Blodgett, LL.D., Dean. For circulars address Secretary Law Faculty,

40 Dearborn St., CHICAGO, ILL.

NEW YORK LAW SCHOOL, 120 BROADWAY, N. Y. City.—"Dwight Method" of Instruction. Degree of LL.B. given after two years' course. Graduate course now added. Tuition fee, $100. For catalogues, etc., address, GEORGE CHASE, Dean.

YALE LAW SCHOOL.

Regular Course two years. Graduate Course two years. FACULTY: Francis Wayland, LL. D.; Edward J. Phelps, LL. D.; William C. Robinson LL. D.; Simeon E. Baldwin, M. A.; Johnson T. Platt, M. A.; William K. Townsend, D. C. L.; Theodore S. Woolsey, LL. B. Also Six Special Lecturers. Year opens Sept. 29, 1891. For circulars, &c. address Prof. Francis Wayland, New Haven, Conn.

MASSACHUSETTS, Boston, 10 Ashburton Place,

Boston University Law School.

Fall term opens Wednesday, October 5. For circulars address EDMUND H. BENNETT, Dean.

Law Department

STATE UNIVERSITY OF IOWA.

Course of study extends through two school years of nine months each. Four professors give their entire time to the school. Expenses reasonable. Graduation admits to State and Federal Courts. Next annual course commences September 21st, 1892. Address

EMLIN McCLAIN,
IOWA CITY, IOWA.

Central Law Journal.

ST. LOUIS, MO., AUGUST 12, 1892.

The Supreme Court of Ohio has, in the recent case of Cross v. Carstens, settled, so far as that State is concerned, the mooted question as to how far a preference, made by a failing debtor in contemplation of or at the time of making a general assignment for the benefit of creditors is valid. That court upholds such a preference. It will be remembered that the Supreme Court of the United States, in construing the assignment law of Illinois, decided in White v. Cotzhausen, against the validity of such a preference, a view, however, which was repudiated by the Supreme Court of Illinois, who contended that there was nothing in the statute to justify such a conclusion. The fact that the Illinois and Ohio statutes upon this subject, are substantially alike, strengthens very much the conclusions of the courts of those two States. At the same time, as we said of White v. Cotzhausen, at the time it was rendered, if it isn't the law, it ought to be.

The Circuit Court of Appeals, sitting at Philadelphia, has lately affirmed an important decision rendered by Judge Wales, of the United States Circuit Court, in the case of Postal Telegraph Co. v. Delaware, etc. Telephone Co., involving the right of a telephone company to refuse its service to a telegraph company, upon the ground that the first mentioned company occupied the position of a licensee and was forbidden by the terms of the license to supply telephones to any telegraph company to be used for telephone purposes. The lower court awarded a *mandamus* compelling the defendant company to place a telephone in the office of the plaintiff company. Judge Wales took the ground that the defendant company was a common carrier which had offered to the public the use of a telephonic system for the rapid conveyance of oral messages from one point to another; that one of the most important duties of a common carrier is that it shall serve all persons alike, impartially and without unreasonable discrimination, and that the performance of this duty could not be avoided by a special contract made between the respondent or its licensor and one or more persons for the exclusive use of the system, such contract being void as against public policy, and that a patented device or devices, when employed for a public use by a common carrier in the prosecution of its business, would be subjected to the same rules and regulations which govern unpatented property under the same circumstances.

The court of appeals, in affirming the case, also holds that it is no longer open to question that telephone and telegraph companies are subject to the rules governing common carriers and others engaged in public employment. While such companies, the court said, are not required to extend their facilities beyond such reasonable limits as they may prescribe for themselves, they cannot discriminate between individuals of classes which they undertake to serve. If the respondent had confined the use of its telephonic facilities to the carriage of personal messages for individuals, excluding those of telegraph companies and others who forward messages for hire, the relator would probably have no ground for complaint. It did not, however, so limit its business, but carried telegraphic messages as well as others.

NOTES OF RECENT DECISIONS.

CONSTITUTIONAL LAW—TAXATION — INTERSTATE COMMERCE.—The case of Lehigh Valley R. R. Co. v. Commonwealth of Pennsylvania, recently decided by the United States Supreme Court, presents one of the vexatious questions as to what is and what is not interstate commerce within the purview of the constitution, prohibiting State taxation. It was held in that case that the transportation of goods and passengers by continuous carriage from one point in a State to another point in the same State is not interstate commerce, within the meaning of the federal constitution, although for a part of the route it is over the soil of another State, and therefore it is within the power of the State wherein it begins and ends to impose a tax on its gross receipts. Fuller, C. J., says:

The Lehigh Valley Railroad Company is a Pennsylvania corporation, which owns and operates an exten-

sive system of railroads in that State, but has no line of its own to Philadelphia. For the traffic from Mauch Chunk to Philadelphia it makes use of two routes—one by the way of the Philadelphia and Reading road, being wholly within the State, and the other by its own line connecting with the lines of the Pennsylvania railroad at Philipsburg, N. J., and thence *via* Trenton, in that State, to Philadelphia. Detailed reports of its receipts show that the passenger traffic of the Lehigh Company to Philadelphia from Mauch Chunk is almost wholly taken over the Philadelphia and Reading, while its coal and general freight traffic reaches Philadelphia by the other road. Philipsburg, N. J., lies across the Delaware river, opposite Easton, Penn. By the running arrangements between the Lehigh and Pennsylvania companies, the transportation of through freight and passengers is continuous from Mauch Chunk to Philadelphia.

The receipts named in class 2 are confined to that part of the transportation from Mauch Chunk to Philipsburg, and the taxation to the mileage wholly within the State of Pennsylvania; and the question is whether this taxation in respect of such receipts from freight and passengers carried by continuous transportation to Philadelphia from Mauch Chunk by way of Trenton, N. J., amounts to a regulation of interstate commerce.

The conflict between the commercial regulations of the several States was destructive to their harmony, and fatal to their commercial interests abroad, and this was the mischief intended to be obviated by the grant to the Congress of the power to regulate commerce with foreign nations and among the States. But as was said by Chief Justice Marshall, the words of the grant do not embrace that commerce which is completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to nor affect other States. "Commerce," observed the chief justice, "undoubtedly is traffic, but is something more; it is intercourse. It describes the commercial intercourse between nations and parts of nations in all its branches, and is regulated by prescribing rules for carrying on that intercourse." Gibbons v. Ogden, 9 Wheat. 189. This is no more than an expansion of its simplest signification—that of an exchange of goods, the bringing of them from the seller to the buyer, however vast the range now comprehended by the term in the progress of society.

Taxation is undoubtedly one of the forms of regulation, but the power of each State to tax its own internal commerce, and the franchises, property or business of its own corporations engaged in such commerce, has always been recognized, and the particular mode of taxation in this instance is conceded to be in itself not open to objection. And while interstate commerce cannot be regulated by a State by the laying of taxes thereon in any form, yet whenever the subjects of taxation can be separated, so that that which arises from interstate commerce can be distinguished from that which arises from commerce wholly within the State, the distinction will be acted upon by the courts, and the State permitted to collect that arising upon commerce solely within its own territory. Ratterman v. Telegraph Co., 127 U. S. 411, 424.

The tax under consideration here was determined in respect to receipts for the proportion of the transportation within the State, but the contention is that his could not be done, because the transportation was in entire thing, and in its course passed through another State than that of the origin and destination of the particular freight and passengers. There was no breaking of bulk or transfer of passengers in New Jersey. The point of departure and the point of arrival were alike in Pennsylvania. The intercourse was between those points, and not between any other points. Is such intercourse, consisting of continuous transportation between two points in the same State, made interstate because in its accomplishment some portion of another State may be traversed? Is the transmission of freight or messages between two places in the same State made interstate business by the deviation of the railroad or telegraph line on to the soil of another State?

If it has happened that through engineering difficulties—as the interposition of a mountain or a river—the line is deflected so as not to cross the boundary, and run for the time being in another State than that of its principal location, does such detour in itself impress an external character on internal intercourse? For example, the Nashville, Chattanooga and St. Louis Railway Company is a corporation created under the laws of Tennessee, and through freight and passengers transported from Nashville to Chattanooga pass over a few miles in Alabama, and perhaps two miles in Georgia, but we had not supposed that that circumstance would render the taxation of that company, in respect of such business, by the State of Tennessee, invalid.

So as to the traffic of the Erie railway between the cities of New York and Buffalo, we do not understand that that company escapes taxation in respect of that part of its business because some miles of its road are in Pennsylvania, while the New York Central is taxed as to its business between the same places, because its rails are wholly within the State of New York.

It should be remembered that the question does not arise as to the power of any other State than the State of the termini, nor as to taxation upon the property of the company situated elsewhere than in Pennsylvania, nor as to the regulation by Pennsylvania of the operations of this or any other company elsewhere, but it is simply whether, in the carriage of freight and passengers between two points in one State, the mere passage over the soil of another State renders that business foreign which is domestic. We do not think such a view can be reasonably entertained, and are of opinion that this taxation is not open to constitutional objection by reason of the particular way in which Philadelphia was reached from Mauch Chunk.

Nor is the contrary conclusion supported by Coe v. Errol, 116 U. S. 517, and Lord v. Steamship Co., 102 *Id.* 541, much relied upon by plaintiff in error.

In Coe v. Errol, logs cut in Maine, and detained in Errol, N. H., on their way down the Androscoggin river to Lewiston, Me., were held by the Supreme Court of New Hampshire not taxable at Errol, while logs cut in New Hampshire, and hauled down to that town for similar transportation, were held taxable, and this court sustained the judgment of the State court in reference to the New Hampshire logs, upon the ground that they were still part of the general mass of property of the State, and had not commenced "their final movement for transportation from the State of their origin to that of their destination." The Maine logs had never been part of the property of New Hampshire, and had no *situs* there. They were therefore not taxable, though whether they were or not was not drawn into decision. These logs were also in course of transportation from the place of cutting to another place likewise in Maine, and as that transportation required them to arrive and remain for a time in New Hampshire, the predicament in that regard was referred to in the opinion by way of argument as being such that New Hampshire could not impose a

burden on that transportation. But the right of Maine to tax them was not disputed.

The single question in Lord v. Steamship Co., was, as stated by Mr. Chief Justice Waite, delivering the opinion of the court, whether Congress had power to regulate the liability of the owners of vessels navigating the high seas, but engaged only in the transportation of goods and passengers between ports and places in the same State, it being conceded that the voyages of the steamship in respect of whose loss the question arose were always ocean voyages. The argument was that "while on the ocean her national character only was recognized, and she was subject to such laws as the commercial nations of the world had, by usage, or otherwise, agreed on for the government of the vehicles of commerce occupying this common property of all mankind. She was navigating among the vessels of other nations, and was treated by them as belonging to the country whose flag she carried. True, she was not trading with them, but she was navigating with them, and consequently with them was engaged in commerce. If in her navigation she inflicted a wrong on another country, the United States, and not the State of California, must answer for what was done. In every just sense therefore she was, while on the ocean, engaged in commerce with foreign nations, and as such she and the business in which she was engaged was subject to the regulating power of Congress."

But it was unnecessary to invoke the power to regulate commerce in order to find authority for the law in question. As stated by Mr. Justice Bradley *in Re* Garnett, 141 U. S. 1, 12: "The act of Congress which limits the liability of ship-owners was passed in amendment of the maritime law of the country, and the power to make such amendment is co-extensive with that law. It is not confined to the boundaries or class of subjects which limit and characterize the power to regulate commerce, but in maritime matters it extends to all matters and places to which the maritime law extends." In that case the Limited Liability Act was applied to a steamer engaged in commerce on the Savannah river.

In *Ex parte* Boyer, 109 U. S. 629, it was decided that the admiralty jurisdiction extended to a steam canal-boat, in case of collision between her and another canal-boat, while the two boats were navigating the Illinois and Lake Michigan canal, although the libelant's boat was bound from one place in Illinois to another place in the same State.

The principle is well settled, and the cases are largely referred to in *Re* Garnett.

In Pacific Coast S. S. Co. v. Board of Railroad Commissioners, 9 Sawy. 253, the Circuit Court for the District of California held, Mr. Justice Field delivering the opinion, that the California State board of railroad commissioners had no power to regulate or interfere with the transportation of persons or merchandise by a steamship company between ports within the State, if they were in transit to or from other States, or if the transportation consisted of voyages upon the ocean, bringing the steamship under the exclusive control of Congress.

But that case involved the direct regulation by a State of transportation which had passed beyond the jurisdiction of the State, and did not decide the question of the power of a State to tax its own corporations in respect of transactions within it in the course of a continuous carriage from one point to another in the State, in accomplishing which a part of another State was incidentally traversed.

The Pennsylvania company was not taxed in respect of its receipts from transportation from points in foreign States to other points in foreign States not touching Pennsylvania; nor from transportation by continuous carriage from points in a foreign State passing through Pennsylvania, and ending in a third State; nor from transportation by continuous carriage from points in Pennsylvania to points in other States; nor from transportation by continuous carriage from points in other States to points in Pennsylvania; nor from transportation by continuous carriage from points in another State to other points in the same State, passing through Pennsylvania; but only in respect of receipts from transportation in Pennsylvania to other points in Pennsylvania without passing out of the State, and from transportation by continuous carriage from points in Pennsylvania to other points therein, but passing out of Pennsylvania into another State, and back again in the course of transportation.

We do not deem it necessary to continue the discussion. We concur with the State court in sustaining the validity of the tax herein involved, and the judgment is affirmed.

CONTRACT TO MAKE A WILL—CONSIDERATION.—The old common law question as to what is and what is not a sufficient consideration to support a contract, arose in Drake v. Lanning, 24 Atl. Rep. 378, where it was decided by the Court of Chancery of New Jersey that a promise by one to make a particular testamentary disposition of property for the benefit of another is unenforceable unless founded upon a sufficient consideration. Pitney, V. C., says:

The law governing contracts of this class is well settled in this State. A man, or, as in this case, a woman, may enter into a binding contract to dispose by will, in a particular manner, of the whole or any part of his property, real or personal. If the character of the contract, or its subject-matter, be such as requires it to be in writing in order to satisfy the statute of frauds, it may, though made by parol, nevertheless be enforced in this court on the score of part performance by the one party to the extent of irretrievably altering his position, so that it would be a fraud upon him to refuse the performance of the other part of the contract. But whether witnessed by a writing, or resting wholly in parol, like all other enforceable contracts, it must be founded on a sufficient consideration, either of benefit to the one party or of detriment to the other, or of both combined. I can conceive of no ground upon reason or upon principle, and can find no authority, for any exception in this respect in favor of this class of contracts. On the contrary, it seems to me that this fundamental rule should be observed and enforced, with greater, rather than less, rigor in such cases. To relax it would be to open the door to the proving and establishing of wills made by parol, and in contradiction, it may be, of a written will, executed with all the statutory formalities. I concur in what is said by the annotator of the third American edition of Fry on Specific Performance, § 223: "Such a contract is regarded with suspicion, and will not be sustained except upon the strongest evidence that it was founded upon a valuable consideration, and was the deliberate act of the decedent."

I have examined every reported case of this class in this State, as well as those cited by counsel from other

jurisdictions, and find in each a well pleaded and proven consideration. In France v. France, 8 N. J. Eq. 650, which though not a case of a promise to give by will, is relied upon by the defendant, the allegation was that the defendant, who was the complainant's father, marked off to him a piece of the father's woodland, and agreed with the son that if he would go on it, and clear and improve certain portions of it, the defendant would give him a deed for it; that complainant, in reliance on this promise, took possession, and spent considerable sums of money over and above all the income which he received from the premises, in clearing and bringing into cultivation a portion of the land, building a house, barn, rail fence, stone wall, a road through the tract, and in planting fruit trees. The chancellor said that these facts were proven, and decreed in the son's favor. Here was a clear case of consideration by way of detriment to the promisee. He spent more money on the land of his father upon the strength of the promise than the income that he received from it; and, if the father had retained the title to the premises, he would have been benefited to that extent himself, besides injuring his son. The case does not help the defendant herein. In Johnson v. Hubbell, 10 N. J. Eq. 332, the consideration was a conveyance of land by the son to his sister, at the request of the father, who, in consideration of it, promised to dispose by will of his property in a particular manner, and to the advantage of the son. In Van Dyne v. Vreeland, 11 N. J. Eq. 370, 12 N. J. Eq. 142, the consideration was the loss by the complainant of the share which he would otherwise have received in his own father's estate and his continued services for the defendant from his infancy until he was 25 years old. See 11 N. J. Eq. pp. 375, 379, bottom p. 380; 12 N. J. Eq. 150, 151. In Davison v. Davison, 13 N. J. Eq. 246, the consideration was the services of the son rendered to the father on his farm for 15 years, during which period the father was infirm, and unable to take care of the farm himself, and needed the assistance of the son. See page 249. In the last two cases there a consideration of both benefit to the one and detriment to the other of the contracting parties. In Young v. Young, 45 N. J. Eq. 27, 16 Atl. Rep. 921, a son expended large sums of his own money, and that of his wife, who was the complainant, in improving the farm in dispute, by erecting upon it new buildings and fences, and in repairing and enlarging those already upon it. See pages 29, 30, 45 N. J. Eq., and pages 922, 923, 16 Atl. Rep. The chancellor held this to be a good consideration. Here, again, the money was expended on the land of the promisor, and, if he had been permitted to retain that land as against his promise, he would have received a benefit equal to the injury which the promisee would have suffered.

Other cases are relied upon by defendant. Coles v. Pilkington, L. R. 19, Eq. 174, decided by Vice-Chancellor Malins, is distinguishable from this case. There the complainant, the promisee, was about to enter into a particular business at a particular place, and had made all her arrangements so to do, and was induced by the promise of the other party to give up and abandon that opportunity for going into business in order to take possession of the premises in question. It was decided so far as related to the question of consideration, on the strength of the case of Loffus v. Maw, 3 Giff. 592, 8 Jur. (N. S.) 607. But with great respect I think Loffus v. Maw, did not go so far as Coles v. Pilkington. In the earlier case the testator, when in advanced years and ill-health, induced the plaintiff, a niece, to reside with and continue valuable services to him on the faith of his representations that by so doing she would become entitled to the benefit of property for life at his death; and by codicil to his will, which was read over to her, trusts were created in her favor. The court held that the testator could not revoke the trust. There the consideration of the promise was valuable services rendered by the plaintiff to the testator. In Coles v. Pilkington there were no benefit whatever to the promisor, and the only injury to the promisee was that she abandoned a project which she had for going into business. That feature of the case distinguishes it from the case in hand, but, in my judgment, it was a very slender ground upon which to base a decree. The whole case shows that the object of the deceased in that case, as here, was to confer a benefit upon the plaintiff, and that she accepted it as such; and having been decided by a judge who had the misfortune to be frequently reversed, even if it were in point, I doubt if I should feel justified in following him. The case is classified in the digests as one of an executed gift. The complainant was put in possession of the premises in question by the deceased in execution of a parol gift. On that ground perhaps it may be sustained. Hammersley v. De Beil, 12 Clark & F. 45, relied upon by the defendant, was a case of contract between the father of an intended wife and her intended husband, as to a marriage settlement, in which the father agreed to settle by will a sum of money upon his daughter and her children, and in consideration of it the intended husband settled a jointure upon his wife and married her. The action was brought by the issue of the marriage, and it was held that the father was bound to make good his promise. The principle stated by Lord Lyndhurst, in delivering judgment in the house of lords in that case, is this: "If a party holds out inducements to another to celebrate a marriage, and holds them out deliberately and plainly, and the other party consents, and celebrates the marriage in consequence of them, if he had good reason to expect that it was intended that he should have the benefit of the proposal which was so held out, a court of equiiy will take care that he is not disappointed, and will give effect to the proposal." The head-note of the case is an extract from the opinion of Lord Cottenham in the same case when before him in chancery; and Lord Campbell, in delivering his concurring judgment in the house of lords (page 88), repeats that extract as follows: "A representation made by one party for the purpose of influencing the conduct of the other party, and acted on by him, will, in general be sufficient to entitle him to the assistance of this court for the purpose of realizing such representation;" and adds: "Of course Lord Cottenham is here speaking of negotiations in reference to marriage; and, if that were not to be considered as the doctrine of a court of equity, the most monstrous frauds would be committed." Marriage has always been held to be a valuable consideration, and I think the principle stated by Lord Cottenham, standing alone, is liable to mislead. The case of Lobdell v. Lobdell, 36 N. Y. 327, is undistinguishable in its main features from France v. France, *supra*. At page 331 the court says: "The promise to convey, as found by the referee, was not a mere voluntary one, but was made upon a valuable consideration, emanating from a loss or disadvantage to the promisee." Of the same character is Freeman v. Freeman, 43 N. Y. 34. At page 39 the court says: "Expenditures made upon permanent improvements upon land of the owner, induced by his promise, made to the party making the expenditure, to give the land to such party, constitute, in equity, a consideration for the promise."

My conclusion from this review of the authorities is that the contract set out in the cross-bill in this case is void for want of any consideration.

THE LIABILITY OF CHARITABLE CORPORATIONS FOR TORTS OF THEIR EMPLOYEES.

The general rule, as defined and applied in a multitude of cases arising in American and British courts is, that corporations are liable for the negligence and tortious acts of their officers and employees, whenever the wrongful conduct of these individuals relates to matters within the scope of their authority and duty as such. A well-defined exception is to be found in the doctrine of an interesting class of cases in which it has been ruled that the liability of corporations instituted for charitable purposes extends no farther, in this respect, than the use of proper care on the part of the managers in the selection of subordinate agents. The entire doctrine of all these cases is based upon the principle that it would be a manifest perversion of the intention of the donors to suffer a fund created for charitable purposes to be applied to the indemnification of persons who have been damnified by the wrongful act of those intrusted with its application. Damages are to be paid from the pocket of a wrong-doer, not from a trust fund.[1] The case of McDonald v. Massachusetts General Hospital,[2] arose upon an action of tort for injuries alleged to have been sustained by reason of negligent and unskillful surgical treatment of the plaintiff by the defendant's servants. The defendant was a public charitable institution, whose funds were derived mainly from public and private charity, with no capital stock and no provision for making dividends on profits, and whatever it might receive from any source it held in trust to be devoted to the object of sustaining the hospital and increasing its benefits to the public by extending or improving its accommodations and diminishing its expenses. Patients were expected to pay as nearly as possible according to their circumstances and the accommodations received, the price of board being placed as low as the funds would permit. A number of free beds were also furnished, of one of which the plaintiff was an occupant. Under these circumstances it was held that there could be no recovery. The case was decided upon analogy to the case of commissioners of public works serving gratuitously, who are not liable for negligence in carrying on the work by which injury has occurred, if proper care has been used by them in selecting those who were actually to perform it.[3] It was held that the liability of the defendant could extend no further than this; that due care having been used in the selection of the hospital attendants, their negligence imposed no responsibility on the corporation.

In the subsequent case of Benton v. Boston Hospital,[4] a corporation similar to the Massachusetts Hospital, it was shown that the plaintiff, while on a visit to her infant grandchild, whom she had under her care and had placed in the hospital for treatment for a stipulated compensation, was injured by falling from a flight of stairs belonging to the building, which had been left by the superintendent's negligence in an unsafe condition. The corporation was held not to be liable, upon the ground that there was no evidence that the superintendent was not a proper person to be appointed to the position.

In the Maryland case of Perry v. House of Refuge,[5] the court of appeals, following the doctrine laid down in England and Massachusetts, held that no action would lie against a juvenile reformatory institution for an alleged assault committed by one of the teachers employed by the institution upon an inmate. The doctrine also received the emphatic sanction of the Supreme Court of Pennsylvania.[6] On the occasion of a fire in the city of Philadelphia, a passer-by was struck by a bundle of tarpaulins thrown upon the pavement by employees of the fire insurance patrol and killed. Upon a suit by his widow and infant children against the patrol for alleged negligence in causing the death, it was shown that the defendant was a purely voluntary association, incorporated to save life and property at fires, having no capital stock and dividing no profits among its members, and sustained by contributions or subscriptions made by a number of the insurance companies and insurance agents of the city of Philadelphia which were purely voluntary, the contributors being in no way benefited by the association apart from the general public. Under these circumstances

[1] Feoffees of Heriot's Hospital v. Ross, 10 Cl. & F. 507, 518.

[2] 120 Mass. 432.

[3] Holiday v. St. Leonard's, 11 C. B. (N. S.) 192.

[4] 140 Mass. 13.

[5] 63 Md. 20.

[6] Fire Insurance Patrol v. Boyd, 120 Pa. St. 624.

it was held that no responsibility for the alleged tort attached to the corporation. The decision was placed, like the others quoted, upon the ground of the doctrine, "hoary with antiquity," that a public charity, whether incorporated or not, is but a trustee, and is bound to apply its funds in furtherance of the charity and not otherwise, and it was pointed out that to permit parties injured by the acts of the servants or agents of such charities to be compensated out of the funds would be an unwarranted misapplication of what had been contributed for an entirely different object; that this would be carrying the doctrine of *respondeat superior* to an unreasonable and dangerous length, extending it, perhaps, to the sweeping away of public charities.

On the other hand, the Supreme Court of Rhode Island, in an elaborately considered case,[7] has affirmed the liability of charitable corporations for the class of torts under discussion. The Rhode Island Hospital, a charitable corporation, was sued for injuries alleged to have been sustained by a patient through the neglect of the attending surgeon. The plaintiff had been received as a patient under a contract to pay a stipulated compensation, although this circumstance does not seem to have entered as an element into the determination of the case. The court held that the plaintiff was entitled to recover. The decision was placed upon the broad ground that there is no principle of law and no analogy to justify any distinction between a corporation and an individual in regard to liability in such cases, and that the fact that the corporation is a charitable one can give it no greater exemption from liability than a charitably disposed individual could claim.

LEWIS HOCHHEIMER.

[7] Glavin v. Rhode Island Hospital, 12 R. I. 411.

CERTIFICATE OF DEPOSIT—NEGOTIABILITY.

FIRST NAT. BANK OF FARMERSVILLE V. GREENVILLE NAT. BANK.

Supreme Court of Texas, March 18, 1892.

The certificate of a bank, showing that a certain person had deposited therein so many dollars "in checks" payable to the order of himself, does not show a promise to pay the amount specified in money, and is not negotiable.

STAYTON, C. J.: This action was brought by appellee to recover on the following instrument: "First National Bank, Farmersville, Texas, April 21, 1887, $2,180. 00-100. Thomas Wilkerson has deposited in this bank twenty-one hundred and eighty & no dollars in cks., payable to the order of himself on the return of this certificate, properly indorsed, one day after date. L. E. Bumpass, Cashier." This instrument was executed by the cashier of the bank, (appellant's). It is admitted that the abbreviation "cks." means "checks," and that the paper came into the hands of appellee under such circumstances as to entitle it to recover if the paper be negotiable. This is the entire case, as it is presented to this court.

It is claimed that the instrument sued on is a negotiable certificate of deposit, and, if this be true, we are of opinion that plaintiff was entitled to recover; for notwithstanding some conflict of authority, it seems to us that, in accordance with the great weight of authority as well as reason, such paper, when negotiable in form should be considered negotiable in fact and law. A "certificate of deposit" is ordinarily defined to be a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to bearer, to the order of the depositor, or to some other person or to his order, and its form must determine its negotiability. For the purposes of this case, this definition is sufficiently accurate and comprehensive: and the first question is whether the instrument sued on can be deemed, within the meaning of the law or the understanding of mercantile men, a certificate of deposit. To give to an instrument the character of a certificate of deposit, the deposit on which it is based must be one of money, and, when this appears to be the case from the face of the paper, the word "payable" becomes certain as to the mode or medium in which payment must be made; for the law implies, under such a state of facts, a promise to pay money for money deposited, and to pay a sum equal to the deposit. The instrument before us has the usual form of a certificate of deposit in all respects, except that it shows upon its face that checks, and not money, were deposited. When money is deposited with a bank, not merely for safe-keeping, it becomes the property of the bank, and the relation of creditor and debtor arises between them; but, when the deposit is of something else than money, this relation cannot arise from the mere fact of deposit as on an implied contract. The paper itself informs us that the things deposited were checks, but we are not advised by it whether the sum named in the paper is the sum called for on the face of the checks or their estimated value; but, were this otherwise, that would be unimportant in determining the true character of the instrument. If the word "checks" was used in the sense attributed to it by mercantile men and law writers,—"an order upon a bank or banking house, purporting to be drawn upon a deposit of funds for the payment, at all events, of a certain sum of money to a person named therein, to his order or

bearer, and payable instantly on demand,"—the inference would perhaps be that the checks deposited were checks on some bank other than that issuing the paper sued upon, and for the purpose of safe-keeping or collection; but in neither event would the relation of debtor and creditor arise from such a deposit. But, for the determination of this case, we cannot indulge in inferences or presumptions other than such as arise as matter of law.

It has frequently been said that certificates of deposit have most of the characteristics of promissory notes, and this seems to be true; but a paper, to be entitled to the force and effect which paper of those classes has, whether negotiable or non-negotiable, must contain a promise "in writing by one person to pay another person therein named, or to his order or to bearer, a specified sum of money, absolutely and at all events." Daniel, Neg. Inst. 28. A paper not having those characteristics cannot be a certificate of deposit or promissory note. The promise to pay must be either an express promise, or such a promise as must necessarily be implied from words used in the instrument; but this implication will not arise simply from the fact that the paper may evidence the indebtedness of its maker to the person to whom it is given. In certificates of deposit there is sometimes an express promise to pay, but the promise is most frequently implied from the word "payable," and in connection with the acknowledgment of the deposit or receipt of a named sum of money by or for the benefit of the person to whom or to whose order the payment is to be made. The acknowledgment, by a banker, of the deposit of money by another, nothing further showing that it was a special deposit, is sufficient to show the relation of debtor and creditor between the banker and depositor or person for whose benefit the deposit is made; and the word "payable," used in such connection, must be understood to be used with reference to that relation, and can mean nothing less than that the maker of the paper intends thereby to be understood to promise to pay the sum acknowledged to have been received. The word "payable," in such a connection, can have no other application.

If the acknowledgment of the receipt of the money showed that the deposit was made only for safe-keeping as a special deposit, then the word "payable," used in connection with such acknowledgment, would certainly not be construed into an absolute promise to pay money, but would be deemed only an agreement to deliver the special deposit, and the paper could not be held to be either a certificate of deposit or prommissory note. The instrument sued on shows clearly that paper styled "checks" was deposited, and does not show that money was; and it is unimportant whether the sum named in the instrument be the face value of the checks or their estimated value, for the word "payable," used in connection with the acknowledgment of the deposit of something else than money, cannot be held necessarily to be the equivalent of an express promise to pay any sum of money. It becomes a promise to pay only when used in connection with words showing an obligation to pay. Literally, the words, "payable to the order of himself on the return of this certificate properly indorsed," are descriptive of the checks received; but the words could not be so considered when they have application to a sum of money deposited generally, and to which they relate. We, however, do not think that those words were used as descriptive of the checks deposited; for the original certificate, made part of the transcript, shows that it was written on a blank form intended for certificates of deposit, and we refer to this matter only to show that the word "payable," when used in such papers, does not always import a promise to pay. The word "payable" is a descriptive word, meaning "capable of being paid; suitable to be paid; admitting or demanding payment; justly due; legally enforceable," (Webst. Dict.); and "to pay" means "to discharge one's obligation to another." If the obligation be to deliver specific articles or packages of money left on deposit, although the obligation arises from an express promise, this would not, although reduced to writing, constitute a promissory note; nor would a like promise, coupled with an acknowledgment of the deposit of such things, constitute a certificate of deposit; but, if the obligation be to pay a certain sum of money absolutely, the maker of the instrument so obligated to pay ought to be held to have promised to pay when he executes such an instrument as that before us would be if the words "in cks." were not in it. If a promise to pay something could be implied from the instrument, could a promise to pay a certain sum of money be implied? If money had been delivered to the bank by Wilkerson, in the absence of something showing that the parties did not so intend, the money would have become the property of the bank, and the relation of debtor and creditor would have arisen, and the amount of the debt and credit would thus have been fixed; but the instrument shows that checks, and not money were deposited. Whether mercantile paper passes to a bank on deposit depends upon the intent of the parties, evidenced by their acts; but there is nothing in the record before us, except the instrument sued on, from which the intent of the parties may be ascertained.

If we assume that the checks became the property of the bank, which is the most favorable presumption for appellee, then may or must we imply a promise, if a promise could be implied, to pay the sum named in the paper sued on. Unless we are required by the instrument itself to assume this, no person dealing with the depositor could safely make such assumption. From the words, "Thomas Wilkerson has deposited in this bank twenty-one hundred and eighty and no dollars in checks," even if it be conceded that

XUM

title to the paper passed to the bank, we cannot assume that the bank became obligated to pay him that sum in money, as must we did the certificate show that he had deposited that amount of money. The instrument does show that the bank assumed some obligation to Wilkerson, and, if it could be held that from it a promise to pay some sum in money might be implied, this would not be sufficient to sustain plaintiff's case; for he must, in order to maintain this action, show, not merely that the bank promised to pay something, but that it promised absolutely to pay a certain sum of money to Wilkerson or to his order. That is not shown. However, the instrument is not one which could be made negotiable by any form of words. In determining whether paper is negotiable, it alone can be looked to, for it is to that alone which persons dealing with it must and have the right to look; and, were it shown by extrinsic evidence that the bank bought from Wilkerson checks, on another bank for which it agreed to pay him the sum of $2,180, and that it executed the instrument sued on as the evidence of that debt, still we would be compelled to deny to the instrument the character of a certificate of deposit as well as negotiability. It may seem that a bank that would put out such paper ought to pay it, on the ground that the form it gave to it may have misled a purchaser; but such considerations can have no weight in determining the liability of parties, for all persons are presumed to know what is negotiable paper and what not, and there are no rules, affecting the business of a country, which it is more necessary to rigidly enforce than those which relate to mercantile paper. The paper was not negotiable, and the judgment of the court below will be reversed, and judgment will be here rendered for appellant. It is ordered.

Gaines, J., dissenting.

NOTE.—The foregoing case is particularly noticeable in two respects: First, in that it appears to be a case of first impression on the exact question substantially involved, whether a certificate of deposit payable in "checks" is a negotiable instrument; secondly, in the circumstance that, though the opinion shows a clear apprehension of the matters under consideration, it does not cite a single authority of any kind upon any phase of the subject. These features cause the case to be peculiarly in need of annotation, which would be otherwise appropriate on account of the strict view taken of the requisites of negotiable instruments. In the absence of direct precedent, light will be likely to be thrown upon the points involved in the case, from a consideration of the nature of certificates of deposit, their negotiability and their characteristics when payable otherwise than expressly in money, as in "currency" or "current funds."

Nature.—A certificate of deposit has been described as a writing, customarily issued by banks or bankers, giving assurance that a certain person named has deposited money with the bank, which is payable to a person named as payee, or to the order of the depositor. 1 Abb. Law Dict. 198. But the latter part of this statement, as to the instrument being payable to certain parties, though it may apply to most certificates of deposit, does not necessarily apply to all of them. It is more accurate to say that a certificate of deposit is "an acknowledgment of a bank or banker for a certain sum of money received upon deposit," and then add that "it is generally framed" so as to make the sum stated subject to repayment in the manner stated, "or sometimes to bearer." This is a variation from the definition in 2 Daniel Neg. Instr. (4th ed.) § 1698, where it is said that the instrument is generally framed "in such a form as to constitute a promissory note, payable to the depositor, or to the depositor or order, or to bearer." It hardly seems necessary to anticipate in the definition the feature of a resemblance to a promissory note. The gist of Daniels' "definition" is also given in the note to O'Neill v. Bradford, 42 Am. Dec. 576. It will be seen that the definition in the principal case does not purport to be general. The nature of such an instrument varies much with its form. These forms are of considerable variety. The instrument may be a mere acknowledgment of deposit, or it may be payable to a particular person; it may be payable to the depositor or to a third person; it may be payable only to the payee, or else to his order or to bearer; it may be payable at a specified future time, or on the return of the certificate; it may be payable in money or in currency; and it may be interest-bearing or otherwise.

Negotiability.—The negotiable character of certificates of deposit is the subject of conflicting decisions. According to the weight of authority, however, a certificate of deposit in the usual form, expressed in negotiable words, as when it is payable to order, or to bearer, is a negotiable instrument (Pardee v. Fish, 60 N. Y. 265, 268, 19 Am. Rep. 176, 177-79; Johnson v. Henderson, 76 N. C. 227, 228; Fells Point Savings Inst. v. Weedon, 18 Md. 320, 327, 81 Am. Dec. 603, 605; McMillan v. Richards, 9 Cal. 365, 418, 70 Am. Dec. 655, 671; Bean v. Briggs, 1 Iowa, 488, 489-91, 63 Am. Dec. 464-466; Carey v. McDougald, 7 Ga. 84, 85; Lynch v. Goldsmith, 64 Ga. 42, 50; Smilie v. Stevens, 39 Vt. 315, 316-17; Bellows Falls Bank v. Rutland County Bank, 40 Vt. 377, 379; Miller v. Austen, 13 How. 218, 228-29. See also Long v. Straus, 107 Ind. 94, 104, 57 Am. Rep. 87, 95; Drake v. Markle, 21 Ind. 433, 436, 83 Am. Dec. 358, 359-60; Kilgore v. Bulkley, 14 Conn. 362, 383; Bank of Orleans v. Merrill, 2 Hill (N. Y.), 295; Coye v. Palmer, 16 Cal. 158, 159), and so far as negotiability is concerned, it must be placed on the same footing as a promissory note (Welton v. Adams, 4 Cal. 37, 40, 60 Am. Dec. 579, 580. See also Klauber v. Biggerstaff, 47 Wis. 551, 555, 32 Am. Rep. 773, 774; Fells Point Sav. Inst. v. Weedon, 18 Md. 320, 327, 81 Am. Dec. 603, 605; Mills v. Barney, 22 Cal. 240, 248-49; Brummagin v. Tallant, 29 Cal. 503, 505, 596, 89 Am. Dec. 61, 62, 63; Poorman v. Mills, 35 Cal. 118, 120; Hunt v. Divine, 37 Ill. 137, 142, 143; Leavitt v. Palmer, 3 N. Y. (Const.) 19, 35, 51 Am. Dec. 333, 336; Austen v. Miller, 5 McLean, 153, 155, 156;) or bill of exchange. Kilgore v. Bulkley, 34 Conn. 363, 383. The main grounds generally assigned for the prevalent view are that such an instrument, though it lacks an express promise to pay, contains a clear implication of an undertaking to pay in such words as "payable," and is thus distinguishable from a mere acknowledgment of a deposit or simple bailment; that the use of words of negotiability fixes the character of the engagement, and that the instrument has all the other requisites of a negotiable promissory note in being a written instrument between definite persons for the payment of a certain amount of money at a specified time absolutely, and subject to no contingency. See opinion by Wright, C. J., in Bean v. Briggs, 1 Iowa, 488, 63 Am. Dec. 464, 465. Some-

times, however, the conclusion reached is affected by the terms of local statutes concerning negotiable instruments. This is the case, for example, in Miller v. Austen, 13 How. 218, 220. And sometimes, as in Carey v. McDougald, 7 Ga. 84, 85, no very definite ground is assigned except the precedents as to the form and requisites of such promissory notes or other instruments as have been held negotiable. It will be noticed that the principal case regards it as in accordance with the "great weight of authority as well as reason," that certificates of deposit, "when negotiable in form, should be considered negotiable in fact and in law," though the question, "What constitutes negotiability in form?" is the burden of the case. On the other hand, in Pennsylvania and Wisconsin there are cases which uphold or favor the view that certificates of deposit, in various familiar forms, are not negotiable instruments. London Savings Fund Society v. Hagerstown Savings Bank, 36 Pa. St. 498, 507, 78 Am. Dec. 390, 397; Lebanon Bank v. Mangan, 28 Pa. St. 452, 453, 458, 459; Patterson v. Poindexter, 6 Watts & S. 227, 231 *et seq.*, 40 Am. Dec. 554, 555 *et seq.*; Chamley v. Dulles, 8 Watts & S. 353, 361; O'Neill v. Bradford, 1 Pinney, 390, 391, 392, 42 Am. Dec. 574, 575, 576. These decisions mainly proceed on the principle that such certificates of deposit lack that express and unconditional promise to pay, as well as those other characteristics that would constitute them negotiable instruments. But in reaching this conclusion the Pennsylvania decisions particularly lay stress on the fact that the money is payable "on return of the certificate," as making the instrument contingent and not absolute. It should be noted, also, that the later view in Wisconsin, as expressed in Klauber v. Biggerstaff, 47 Wis. 551, 555, 32 Am. Rep. 773, 774, is in accord with the prevailing doctrine. In the case just cited, decided in 1879, it is said, in regard to the ordinary form of a certificate of deposit of money, that it "falls precisely within the definition of a promissory note;" that "it seems strange that there ever was a doubt that it was in law a negotiable promissory note;" but that such doubt "may now be considered at rest."

Certificates Payable in Currency.—It seems to be now the preponderating doctrine that a certificate of deposit payable in "currency" is negotiable, and is not open to the objection that the instrument is not payable in money. This is the view decidedly favored in a leading case in Wisconsin (Klauber v. Biggerstaff, 47 Wis. 551, 555, 32 Am. Rep. 773, 774), upon a full consideration of the nature of bank notes and paper money, but without expressly overruling prior cases (Ford v. Mitchell, 15 Wis. 305; Platt v. Bank, 17 Wis. 223, and Lindsey v. McClelland, 18 Wis. 481, 86 Am. Dec. 786), deemed distinguishable in the same State. The ground taken in this ruling, which was made in 1879, is that "currency" means money which is current and circulated at par, whether in coin or in paper, and whether it is legal tender or not; and that much of the confusion in the cases appears to have arisen from want of proper distinction between money which is current and money which is legal tender, which latter property belongs no more to inferior coin than to paper currency. This position is supported in the above cited case of Klauber v. Biggerstaff, 47 Wis. 551, 555, 32 Am. Rep. 773, 774. (By quotation from the opinion of Lord Mansfield, in Miller v. Race, 1 Burr, 452, which is regarded as going far to make the word "currency" equivalent to the word "money," and as having been very generally followed in this country.) In regard to the earlier Wisconsin cases to the contrary, they are not expressly overruled, even as to any material not part of the language of the opinion therein; but it is suggested that when they were decided, in the years 1862, 1863 and 1864, the paper money circulated in the State *de facto* was of a very heterogeneous character; that in the latest two of them the certificate was payable in "current funds," which might make a difference; and that the earliest of them, on which the others mistakenly relied, is not at all authoritative, as there was not a unanimous opinion upon the point in question. A statute passed subsequently to these cases is regarded as not militating against the position taken. In this case the certificate acknowledged the deposit of a specified number of dollars, payable to the depositor in currency on the return of the certificate. There were not even words of negotiability. In Ohio, in 1860, a like view was taken, and a certificate of deposit payable "in currency" as received was regarded as a negotiable promissory note (in Howe v. Hartness, 11 Ohio St. 449, 453, 78 Am. Dec. 312, 313), notwithstanding the fact that the term "currency" was, at the time and place of the transaction, deemed to include the bank bills of sundry specie-paying banks outside as well as within the State. It was conceded that such bank bills are, strictly speaking, but promises to pay money, and that they are not a legal tender; but the court could not shut its eyes to the fact that "in the commercial and business transactions of everyday life they circulate as money throughout the community, and are, by general consent and usage, so treated and received." The decision seems to have been largely rested, however, upon the State precedents in the shape of rulings uniformly holding that promissory notes may be negotiable, though payable in current bank bills, and that such bills are money within the meaning of the statute. After reviewing these rulings in Morris v. Edwards, 1 Ohio, 189; Sweetland v. Creigh, 15 Ohio, 118, and White v. Richmond, 16 Ohio, 5, Scott, C. J., who delivered the opinion, cogently said: "On a question affecting the character of commercial paper, we do not feel at liberty to overrule these repeated adjudications and ignore the general understanding of the business community. And so long as the general consent of mankind, in all business transactions, gives to current bank bills the character of money, we see no good reason why courts, when the question is presented in a commercial point of view, should regard them otherwise." In several other States the question is left undecided or untouched. In Kansas, in 1862, a certificate of deposit for a specified number of dollars, payable to the depositor's order, on return of the certificate, in "current funds," was held to be a promissory note; but it was considered that it might well be quustioned whether such a note could be deemed negotiable, as the authorities on the point, which were reviewed, were numerous and somewhat conflicting. But their relative weight or preponderance was not determined, as the terms of the statute were not regarded as conclusively determining the rights of the parties to the instrument. Blood v. Northrup, 1 Kan. 28, 35-37. In Indiana, in 1863, a certificate of deposit, payable to the order of the depositor, "in currency," on return of the certificate, was held to be a promissory note, and to be negotiable by indorsement under the State statute. But the point that the certificate was payable in currency was not discussed. Drake v. Markle, 21 Ind. 433, 434-36, 83 Am. Dec. 358, 359-60. In 1886, in the same State, an instrument stating the receipt from a designated party of a specified number of dollars on deposit, "in national currency," was held to be, if not a certificate

of deposit, at least a written contract for the payment of money on demand, so that the six years' statute of limitations would not begin to run against it until demand. But the point here pertinent was not considered. Long v. Straus, 107 Ind. 94, 103-5, 57 Am. Rep. 87, 95. In Alabama, in 1875, a certificate of deposit which certified that a designated association had on deposit a specified sum (named in dollars) "in currency," was held a promissory note and its consideration open to proof under the statute of that State, as in the case of any written instrument. But the effect of the words "in currency" was not touched on. Hart v. Life Association, 54 Ala. 495-8. But the contrary view to that stated as preponderating is sustained by a decision rendered in Iowa in 1870, concerning a certificate of deposit payable to the order of the depositor "in currency," on return of certificate, with six per cent. interest if left over one month. The position taken was largely governed by the provisions of the State statute. Beck, J., who delivered the opinion, said: "It is the settled rule of the authorities that instruments payable in anything besides money are not negotiable. Such instruments, however, are made negotiable by Revision, § 1797: 'Whenever it is manifest from their terms that such was the intent of the makers, but the use of the technical words "order" or "bearer" alone will not manifest such intent.' A note payable to order in currency, in Rindshoff Bros. & Co. v. Barrett, 11 Iowa, 172, was held, under this statute, to be non-negotiable. Applying the doctrine of that case to these [certificates, of which there were several] before us, we must hold that the instruments which are the foundations of these actions are not negotiable paper." Huse v. Hamblin, 29 Iowa, 501, 4 Am. Rep. 244, 245. This rule was declared to be supported by various authorities, including the earlier Wisconsin cases and others which have been found to pertain to negotiable instruments in general. The different rule alleged to exist in New York and Ohio was offset by reference to other rulings in the former State. Most of the citations made relate to negotiable instruments in general, though the Ohio case of Howe v. Hartness (11 Ohio St. 449, or 78 Am. Dec. 312, before mentioned), was cited in support of the rule.

Certificate Payable in "Current Funds," etc.—It has already been seen that among the earlier Wisconsin cases were two (Platt v. Bank, 17 Wis. 222, 226; Lindsey v. McClelland, 18 Wis. 481, 484, 86 Am. Dec. 786, 787), which regarded certificates of deposit as not negotiable when they were payable in "current funds;" but that these were in a later case, decided in 1879 (Klauber v. Biggerstaff, 47 Wis. 551, 556-57, 32 Am. Rep. 773, 776), deemed unthoritative and probably distinguishable on the ground of a difference between such a certificate and one payable in "currency." "*Prima facie*," it was pointed out by Ryan, C. J., in the case last cited, "there might seem to be little difference in the two terms. But the opinion of the court in Platt v. Bank, 17 Wis. 222, 226-27, gives a construction to the term current funds which the term currency could not properly bear. 'It was suggested at the bar that the certificates might be deemed payable in the treasury notes of the United States, and therefore negotiable, since the law of congress declares such notes to be equivalent to gold and silver in payment and tender for debts. But the words "current funds" cannot be so construed. They were undoubtedly intended to include all funds bankable in this State, and any such funds would answer the description and satisfy the contract. A tender in any of the notes of the banks of this State passing as currency would have discharged the obligation.' With such a construction of the term used, the instrument was not payable in money, and therefore not negotiable." But Chief Justice Ryan evidently did not favor any distinction between the two terms; for after explaining that "currency" meant bank notes or paper money at par, he said (32 Am. Rep. 780): "This construction of the term 'currency' might perhaps properly be extended to the term 'current funds.' It must extend to the latter term whenever it is used in the legal sense of money. Bankers and money dealers cannot by choice or use of terms give the character and attributes of money to anything not money—to anything of less value than money." In a leading New York case, however, which was decided by the court of appeals in that State in 1875 (Pardee v. Fish, 60 N. Y. 265, 269-70, 10 Am. Rep. 176, 178-79), it was distinctly held that there is no force in the objection that a certificate of deposit is not commercial paper for the reason that it is made payable in "current bank notes" instead of money. The decision seems to be based on the authorities in that State as to negotiable instruments in general, which were thought to be adverse to such a position, and the doctrine was regarded as applicable that the court would take judicial notice of the fact that such notes were lawful money of the United States. "It is said," said Miller, J., "that these decisions (as to promissory notes payable in bank bills or notes, in Keith v. Jones, 9 Johns. 120, and Judah v. Harris, 19 Johns. 144) are placed upon the ground that the court take judicial notice that such bills are equivalent to specie. The same rule may well apply here, as 'current bank notes' are notes or bills used in general circulation as money, and constituted the general currency of the country recognized by law at the time and place where payment was to be made and demanded. These notes which were in circulation, when the certificate was given and payment demanded, were almost entirely of one kind authorized by the government as currency. They thus being lawful money of the United States the court were bound to take judicial notice of that fact. The cases of Licher v. Goodrich, 5 Cow. 186, and Thompson v. Sloan, 23 Wend. 77, are not in conflict with Heath v. Jones, and Judah v. Harris, *supra*. Although the doctrine of the latter was doubted in 3 Kent's Commentaries, pp. 75, 76, and in some of the State courts it is held that a note payable in current funds is not negotiable, it is safe to follow the adjudications in this State as settling the law upon the subject." The very cases here regarded as not in conflict with other rulings in the same State, are mentioned, with Little v. Phœnix Bank, 2 Hill, 425, 7 Hill, 359, as if they had a different effect, in the before stated case of Huse v. Hamblin, 29 Iowa, 501, 594, 4 Am. Rep. 244, 245. But the contrary view was taken in Indiana in the same year. A certificate of deposit payable to the depositor's order, "in current funds," on return of the certificate properly indorsed, was held to be a promissory note of the bank, assignable under the statute, but not negotiable as an inland bill of exchange. The reason given was: "It lacks one of the essential qualities of a negotiable promissory note. It is not payable in money. It is payable in current funds. This takes from it the character of a negotiable promissory note." Downey, J., delivering the opinion in Nat. State Bank of Lafayette v. Ringel, 51 Ind. 393, 394. The authorities cited in support of this view were various treatises on negotiable instruments: Chitty on Bills, 132; Edw. Bills and Notes, 134; Story Notes, §§ 17, 18, and one of the early New York cases (Cook v. Sutterlee, 6 Cow. 108).

So, in North Carolina, it was distinctly held, in 1877,

that to constitute a negotiable instrument, the promise must be to pay in money, and that a certificate of deposit payable to the depositor on ten days' notice, with interest, etc., "in current funds" on the return of the certificate, is not negotiable so as to give an action against an intermediate indorser. It was admitted that there is a conflict of authority upon the question as concerning negotiable instruments in general, but it was considered, after a citation of various cases, that the weight of authority and the most approved writers on commercial law favor the decisions of the State court that the instrument should express simply that it is payable in dollars which have a certain and well fixed signification in law. Johnson v. Henderson, 76 N. C. 227, 228, 229. Citation was made of 1 Daniel Neg. Inst. 44, 46, as collecting the authorities on both sides, and the "legal tender" decisions were regarded as superseded by the ruling as to payment in currency in the before stated case of Huse v. Hamblin, 29 Iowa, 501, 4 Am. Rep. 224.

Certificate Payable in United States Bonds.—A certificate of deposit reciting the deposit of a specified number of dollars in treasury notes to the credit of the depositors, and made payable to their order in United States six per cent. interest bearing bonds, was held in Minnesota, in 1868, not to be a promissory note, negotiable or otherwise, but a special contract for the delivery of United States bonds. This conclusion was reached as being the fair and natural import of the language used, and on the ground that it cannot be presumed, contrary to the letter of the contract, that the option was given to the bank either to refund the money when called for, or to deliver bonds commonly known to be subject to fluctuation in value. Easton v. Hyde, 13 Minn. 90, 91. NATHAN NEWMARK.

BOOKS RECEIVED.

Hand-book of all the Decisions of the Supreme Court of the United States, from its Organization to October Term, 1891. Part I, Index by Subjects; Part II, Index by Cases. By H. D. Clarke, Librarian of the Court. The Lawyers' Co-operative Publishing Company, Rochester, N. Y. 1892.

The Puritan in Holland, England and America, an Introduction to American History. By Douglas Campbell, A.M., LL.B., Member of the American Historical Association. In two volumes. New York: Harper & Brothers, Franklin Square. 1892.

HUMORS OF THE LAW.

"I am as much opposed to drinking as any one," said Lawyer Jenks to his client, "but nevertheless liquor rightly used is a blessing to humanity; when I was ill last winter, I actually believe it saved my life." "Very likely; but how does that prove that liquor is a blessing to humanity?" was the reply.

A "Tombs" lawyer had been endeavoring all the week to get his client out of durance vile. One morning he walked into the "Tombs," and sent for his client. His face was as smiling as the historic basket of chips. "It's all right," said the lawyer grasping his client's hand. "Yes?" ejaculated the client brightening up. "Yes, everything's fixed." "How?" "I can get you out on a habeas corpus." The client's face lengthened as he replied, "Can't be done, wouldn't dare try it; my cell is on the third tier, and the damned thing might break.

WEEKLY DIGEST

Of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of the Supreme, Circuit and District Courts of the United States, except those that are Published in Full or Commented upon in our Notes of Recent Decisions.

ALABAMA....4, 20, 31, 42, 47, 99, 124
CALIFORNIA....23, 30, 79
COLORADO....18, 50, 115
DELAWARE....122
FLORIDA....106
GEORGIA....12, 17, 41, 80, 88, 89, 102, 108, 113
ILLINOIS....44, 54, 85, 91, 114
INDIANA....5, 7, 32, 33, 38, 63, 65, 68, 75, 76, 78, 92, 100
KANSAS....16, 43, 71, 97, 98, 105
LOUISIANA....84, 107
MARYLAND....8, 46, 61, 118
MASSACHUSETTS....2, 3, 45, 57, 64, 67, 73, 86, 112, 119
MINNESOTA....10, 14, 37, 53, 58, 77, 81, 116
MISSISSIPPI....120
MISSOURI....1, 22, 27, 29, 55, 66, 69
MONTANA....90
NEW JERSEY....35, 40, 52, 70, 121, 123
NEW YORK....11, 21, 51, 59, 74, 101, 104, 111, 125
NORTH CAROLINA....96
OHIO....9, 34, 48
OREGON....36
PENNSYLVANIA....6, 24, 25, 49, 56, 72, 82, 83, 93, 103, 117
SOUTH CAROLINA....87
TEXAS....13, 19, 26, 28, 60, 94, 95, 110
UNITED STATES C. C....15, 109
UNITED STATES C. C. OF APP....62
UNITED STATES D. C....39

1. ACCORD AND SATISFACTION—Evidence.—In partition plaintiff claimed an undivided three-fourths interest in 19 lots, the title of which was in defendant. Thereafter defendant conveyed to plaintiff 11 of the lots, with the understanding that it was in full settlement, whereupon plaintiff dismissed his suit: Held, that it was inferable that the conveyance was understood by plaintiff to be a final settlement.—BURNHAM V. ROSENBERGER, Mo., 19 S. W. Rep. 732.

2. ADMINISTRATION—Rights of Legatees.—Under Pub. St. ch. 129, § 10, which provides that "the executor of an executor shall not, as such, administer on the estate of the first testator," a legatee cannot maintain an action against the administratrix of the deceased executor of the will under which she claims.—TALLON V. TALLON, Mass., 31 N. E. Rep. 287.

3. ADVERSE POSSESSION—Color of Title.—Where defendant has been in adverse and continuous possession for 20 years the limitations under Pub. St. ch. 196, § 1, will run against the owner, and it is immaterial whether or not defendant honestly believed he had a right to hold the land.—WARREN V. BOWDRAN, Mass., 31 N. E. Rep. 300.

4. ANIMALS—Impounding.—A person who drives an animal from one place in a district in which it is unlawful for it to run at large to another place in the same district, with the intention of impounding it, is not guilty of a violation of Crim. Code, § 3868, forbidding the driving of animals from a lawful into an unlawful district to be impounded.—GHENT V. STATE, Ala., 11 South. Rep. 130.

5. ATTORNEY AND CLIENT — Contracts.—During the years 1883 and 1884, plaintiff, as attorney, performed certain services for defendant, a railway company. January 1, 1885, defendant's general counsel sent plaintiff an annual pass as compensation for the legal services plaintiff might render defendant "for the current year," which pass was accepted on such terms: Held, that the services rendered in 1883 and 1884 were not thereby paid for.—OHIO & M. RY. CO. V. SMITH, Ind., 31 N. E. Rep. 371.

6. BANKS—Application of Deposit.—A note was indorsed to a bank for full value, before maturity. It was not paid, and was protested. The indorser to the bank had sufficient money deposited there to pay the note.

A clerk of the bank charged the note up to the indorser; but when this became known to the cashier, he directed the clerk to correct his act by crediting the indorser with the same amount, so as to leave his account as before. The indorser had not authorized such application of his deposit, but had insisted that the bank proceed against the maker, to which the bank had agreed: Held, that such application of the deposit was not a payment of the note.—MECHANICS' & TRADERS' BANK OF BROOKLYN V. SEITZ, Penn., 24 Atl. Rep. 356.

7. BANKS—Deposit.—Where the amount sued for was an alleged deposit entered in plaintiff's bank pass book by defendant bank, and plaintiff's account as contained in such pass book was placed in evidence, the court properly instructed the jury that they might "consider the position of the account as shown in that book, and the manner of placing it as you have seen it on the book."—FIRST NAT. BANK OF PORTER COUNTY V. WILLIAMS, Ind., 31 N. E. Rep. 370.

8. CARRIERS — Passengers.—In an action against a railroad company, where the *gravamen* of the complaint is that the train did not stop long enough to enable plaintiff, by the use of reasonable diligence, to leave the cars in safety, such allegation must be established by proof; and the fact that plaintiff was carried beyond her destination establishes no presumption of negligence on the part of the carrier.—HEWES V. PHILADELPHIA, W. & B. R. CO., Md., 24 Atl. Rep. 325.

9. CARRIERS — Passengers — Negligence.—It is a well-settled rule of the law of negligence that the plaintiff may recover, notwithstanding his own negligence exposed him to the risk of the injury of which he complains, if the defendant, after he became aware, or ought to have become aware of the plaintiff's danger, failed to use ordinary care to avoid injuring him, and he was thereby injured.—CINCINNATI, H. & D. R. CO. V. KASSEN, Ohio, 31 N. E. Rep. 282.

10. CARRIERS—Passengers—Street Car.—The servants of a street car company who control the movements of its cars are bound to use due care in starting the same so as to allow passengers a reasonable opportunity to get safely on board, regard being had to the circumstances of each case.—STEEG V. ST. PAUL CITY RY. CO., Minn., 52 N. W. Rep. 393.

11. CARRIERS OF GOODS—Demurrage.—Where a bill of lading contains no stipulation that the consignee shall be liable for damages in the nature of demurrage for delay in loading, the consignor alone is liable, though the consignee agreed with the carrier as to the rate of freight, and paid it when the goods were delivered.—VAN ETTEN V. NEWTON, N. Y., 31 N. E. Rep. 334.

12. CARRIERS OF GOODS—Live Stock.—Inasmuch as the common carrier did not stipulate by special contract against liability for his own negligence, even if he could do so effectively, the existence of a special contract for the shipment of live stock, with certain stipulations therein exempting the carrier from liability, is no obstacle to the maintenance of an action of tort based on legal duty and breach thereof by negligence.—NICOLL V. EAST TENNESSEE, V. & G. R. CO., Ga., 15 S. E. Rep. 309.

13. CHATTLE MORTGAGE—Stock—Validity.—Under Act March 24, 1879, § 17, (1 Sayles' Ann. St. art. 65*r*), declaring fraudulent and void every mortgage and deed of trust by the owner of a stock of goods contemplating a continuance of possession and control of the business by sale by the owner, a deed of trust by an insolvent to secure preferred creditors is not void by reason of the fact that after the execution of the deed the owner was employed by the trustee to take charge of and sell out the stock.—BETTES V. WEIR PLOW CO., Tex., 19 S. W. Rep. 705.

14. CONTRACT—Real Estate Agents.—Transactions in violation of law cannot be made the foundation of a valid contract.—BUCKLEY V. HUMASON, Minn., 52 N. W. Rep. 385.

15. COPYRIGHT—Title of Complaint.—In a suit for the infringement of a copyright, where it is shown that the copyright was taken in the name of the complaining publisher as "proprietor," defendant cannot object that the author was a married woman, and that her husband was entitled to the fruits of her literary labor; for it will be presumed that the legal title of the author was properly vested in complainant.—SCRIBNER V. CLARK, U. S. C. C. (Ill.), 50 Fed. Rep. 473.

16. CORPORATIONS — Appointment of Receiver.—Dissatisfaction by a minority of the stockholders of a corporation with its management by the majority, in the absence of fraud or insolvency, is not sufficient to authorize the court to appoint a receiver at the instance of the minority.—FLUKER V. EMPORIA CITY RY. CO., Kan., 30 Pac. Rep. 18.

17. CORPORATIONS — Appointment of Receivers. — In appointing a receiver to take charge of the assets of an insolvent corporation under a petition in the nature of a creditor's bill, it is not error to withhold from the receiver assets upon which there are large mortgage liens, even though the value of the assets may be considerably in excess of the amount of the mortgages; provision being made in the order of appointment for turning over such excess to the receiver when it shall be realized through the exercise of the power of sale embraced in the mortgage deeds.—WEIHL V. ATLANTA FURNITURE MANUF'G. CO., Ga., 15 S. E. Rep. 282.

18. CORPORATIONS—Suits by Stockholders.—The courts will not, as a general rule, at the suit of a stockholder, interfere with the internal management of a corporation. To maintain such a suit a stockholder must be able to show that otherwise there will be a failure of justice.—MILLER V. MURRAY, Colo., 30 Pac. Rep. 46.

19. COUNTY TREASURER.—An order of the commissioners' court directing the county treasurer to deposit county funds in a certain bank does not exempt him from liability for their loss through failure of the bank.—MCKINNEY V. ROBINSON, Tex., 19 S. W. Rep. 699.

20. CRIMINAL EVIDENCE — Dying Declarations.—Deceased's dying declaration was properly admitted in a trial for murder where it appeared that it was made the evening before death, when deceased was impressed with his approaching demise, and so expressed himself, whereupon the declaration was reduced to writing by the attending physician in the presence of deceased and deceased's brother, and signed by the former; the physician and brother both testifying that deceased made the statement as written down, and that his mind was clear at the time.—SCALES V. STATE, Ala., 11 South. Rep. 121.

21. CRIMINAL LAW—District Attorney—Necessary Expenses.—The duty of a district attorney, under 1 Rev. St. p. 383, § 89, to conduct prosecution for crimes, embraces whatever is properly essential to bring a criminal to trial.—PEOPLE V. BOARD OF SUPR'S. OF COLUMBIA COUNTY, N. Y., 31 N. E. Rep. 322.

22. CRIMINAL LAW—Embezzlement.—Rev. St. 1889, ch. 164, prescribing the duties of the State treasurer, and affixing certain penalties for a violation thereof in certain contingencies, is not repugnant to section 3555, providing for the indictment of "any officer" appointed or elected by virtue of the constitution or any law thereof, who may be guilty of embezzlement, nor does it afford any reason why the treasurer may not be so indicted if guilty of embezzlement.—STATE V. NOLAND, Mo., 19 S. W. Rep. 715.

23. CRIMINAL PRACTICE—Burglary.—Pen. Code, § 459, provides that "every person who enters any house with intent to commit grand or petit larceny, or any felony, is guilty of burglary:" Held, that an information which alleged that defendant "did willfully, unlawfully, and feloniously enter a certain dwelling house, with intent then and there to commit grand and petit larceny," etc., was a sufficient charge of burglary, and alleged but one offense.—PEOPLE V. HALL, Cal., 30 Pac. Rep. 7.

24. DEED — Cancellation — Confidential Relation.—There is nothing in confidential relation of a master and servant which, *per se*, forbids the latter accepting

a gift from the former.—DORAN V. MCCONLOGUE, Penn., 24 Atl. Rep. 357.

25. DEED—Construction of Word "Heirs."—By a deed between T, "of the first part," and B, "of the second part," land was granted to B and "her heirs" for the use of "the said B and her heirs, viz., S, M, O, and H," to have and to hold the same "to the use of the said party of the second part," and "her heirs, forever." The designated heirs were B's children: Held, that the word "heirs" was used in the sense of "children," and that the named children were entitled to immediate possession as tenants in common with B.—BRASINGTON V. HANSON, Penn., 24 Atl. Rep. 344.

26. DEEDS—Destruction of Record.—Under Act July 13, 1876, as amended by Act March 13, 1879, (Rev. St. art. 4292), providing that when the record of a deed has been destroyed the original may be re-recorded, the second registration to have effect from date of original filing, provided the second registration is within four years after destruction of records, one who buys in good faith, more than four years after destruction of record and before a re-registration, has no constructive notice.—BARCUS V. BRIGHAM, Tex., 19. S. W. Rep. 703.

27. DEED — Husband and Wife.—In Missouri a *feme covert* may, with her husband, execute a valid deed of trust of her legal real estate to secure her husband's debt.—FERGUSON V. SODEN, Mo., 19 S. W. Rep. 727.

28. DEED—Married Woman.—A recital in a deed to a married woman that the consideration was paid out of her separate property, and that the conveyance was to her as her separate property, removes the presumption in favor of community property, and, when uncontradicted, vests the title according to the terms of the deed.—MCCUTCHEN V. PURINTON, Tex., 19 S. W. Rep. 710.

29. DEED—Recitals — Estoppel. — Where an incumbrance is not made a part of the consideration, and not deducted from it, and where it is not assumed by the grantee, the recital in a deed that the conveyance is subject to an incumbrance does not estop the grantee from showing that what purports to be an incumbrance is not one in fact, because of its invalidity.—BROOKS V. OWEN, Mo., 19 S. W. Rep. 723.

30. DEED—Rescission.—A transfer of property, sought to be rescinded, and for which a valuable consideration was falsely recited, was executed by plaintiff to defendant, her husband, to induce him to withdraw a divorce suit instituted by him for the purpose of forcing plaintiff, who was suffering from nervous prostration, to surrender part of her property. The transfer was executed in the presence of defendant and his attorney, and plaintiff had no independent advice as to the effect thereof: Held, that the transfer was executed under undue influence, within Civil Code, § 1575, and should be rescinded.—DOLLIVER V. DOLLIVER, Cal., 30 Pac. Rep. 4.

31. DETINUE—Possession.—Plaintiff and wife carried the chattels in suit to the boarding-house of defendants, and boarded there for a time, using part of the chattels themselves, and distributing some through the house, and plaintiff's wife claimed and controlled the property, as was recognized by defendants: Held, that defendants did not have such possession as would sustain plaintiff's action of detinue.—BEHR V. GERSON, Ala., 11 South. Rep. 115.

32. DRAFTS—Delay in Presentation.—In an action by the purchaser against the drawer of drafts, payment of which was refused by reason of the suspension of the drawee when presented, 2 and 5 months after issue, though they could have been sent through the mail in 10 days, plaintiff is guilty of laches, in the absence of evidence that they had been in circulation, and presentment delayed on that account. — ANGALETOS V. MERIDIAN NAT. BANK OF INDIANAPOLIS, Ind., 31 N. E. Rep. 368.

33. ELECTION — Mandate to Compel.—A complaint to compel an election inspector to certify the result of an election to the circuit court, pursuant to Rev. St. 1881, § 3309, which alleges that the "election was duly and legally held," is not defective for failing to allege that the election board made a certified return of the number of votes cast for each candidate; for, if such return be required, it is presumed, in the absence of a showing to the contrary, that the board did its duty.—ENOS V. STATE, Ind., 31 N. E. Rep. 357.

34. EMINENT DOMAIN—Compensation.—In a proceeding under sections 6448, 6449, Rev. St., by an owner of land wrongfully occupied by a railroad company, to compel the company to appropriate and pay for the same, the measure of compensation is the value of the land at the time it is assessed in the proceeding.—PITTSBURGH & W. R. CO. V. PERKINS, Ohio, 31 N. E. Rep. 350.

35. EQUITY — Conversion of Devised Real Estate.—Testator directed all his real estate to be sold, and the proceeds, after the payment of debts, etc., to be distributed among his children. The executors sold the land, and shortly afterwards a son of testator assigned to complainant his interest under the will, of which assignment complainant notified the executors. Subsequently this son quitclaimed all his interest in such estate to defendants: Held that, since equity regarded the real estate as personalty from the death of testator, the assignment to complainant took precedence of the deed of quitclaim.—SNOVER V. SQUIRE, N. J., 24 Atl. Rep. 365.

36. EQUITY—Jurisdiction.—Equity will not adjudge a question of priority of title of a corporation to rights and franchises for irrigation purposes in order to enable it to issue bonds to continue and complete the work, on a presumption of possible intent of defendants to disturb the same, there having been no overt act or disturbance, the corporation not having diverted the water, nor done any work, comparatively, of construction.—UMATILLA IRRIGATION CO. V. UMATILLA IMP. CO., Oreg., 30 Pac. Rep. 30.

37. EVIDENCE — Admissions of Partner.—Admissions and declarations of one member of a firm, to be admissible in evidence as against and to bind his associates, must be made while he is engaged in transacting legitimate partnership business, or made in relation to matters within the scope of the partnership. By such declarations and admissions a transaction cannot be brought within the scope of the partnership business, when in fact it has no connection with it.—SLIPP V. HARTLEY, Minn., 52 N. W. Rep. 386.

38. EVIDENCE—Issue of Corporate Stock.—In an action against the directors of a corporation, under Rev. St. 1881, §§ 3859-3866, 3868, making them liable in case the corporation becomes insolvent by reason of the nonpayment of the capital stock, a written contract, under which stock was issued, is the best evidence of the purpose of its issue, and the secretary cannot testify thereto, and it is immaterial that plaintiff was not a party to the contract.—CLOW V. BROWN, Ind., 31 N. E. Rep. 361.

39. FEDERAL OFFENSE—Trusts and Monopolies.—Act Cong. July 2, 1890, "to protect trade and commerce against unlawful restraints and monopolies," provides, in section 2, that "every person who shall monopolize, or attempt to monopolize, or combine or conspire with any other person or persons to monopolize, any part of the trade or commerce among the several States, or with foreign nations, shall be deemed guilty of a misdemeanor," etc: Held, that an indictment hereunder which fails to allege that defendants monopolized, or conspired to monopolize, trade and commerce among the several States, or with foreign nations, fails to state an offense, even though it does allege that they did certain acts with intent to monopolize the traffic in distilled spirits among the several States, and that they have destroyed free competition in such traffic in one of the States, and increased the price of distilled spirits therein. — UNITED STATES V. GREENHUT, U. S. D. C. (Mass.), 50 Fed. Rep. 469.

40. FRAUDULENT CONVEYANCES.—A father conveyed a farm to his son, the only consideration for which was the assumption by the son of the payment of certain debts of the father, including one due the complainant. The son, with the father's consent, offered to pay the

complainant by the son's note, payable at a future day, which the complainant declined, and sued the father and obtained judgment for his debt, and filed a bill to subject the land in the son's hands to the lien of his judgment: Held, that the conveyance tended to hinder and delay the complainant in the collection of his debt, and was void against him.—McKeague v. Armstrong, N. J., 24 Atl. Rep. 398.

41. Fraudulent Conveyances — Confidential Relations.—A conveyance by a man to his daughter and her husband, purporting to be founded on a valuable consideration, cannot be impeached for fraud by declarations of the maker, whether before or after its execution, to the effect that the real consideration was for value as to one-half of the premises, and for love and affection as to the other half; the declarations having been made when the grantees were in possession and the grantor was out of possession.—Hicks v. Sharp, Ga., 15 S. E. Rep. 314.

42. Garnishment—Claim of Exemptions.—Where the principal defendant claims the amount found due from a garnishee as an exemption, and the claim is not contested, there is no authority for judgment against the garnishee.—Young v. Louisville & N. R. Co., Ala., 11 South. Rep. 121.

43. Garnishment — Lien.—Garnishment proceedings bind only such property, money, and credits, not exempt from attachment and garnishment, as belong to the defendant, in the possession of the garnishee, or owing by him to the defendant, at the time of the service of the process upon the garnishee.—Gillette v. Cooper, Kan., 30 Pac. Rep. 13.

44. Insanity—Appointment of Conservator.—Rev. St. 1891, ch. 37, § 220, provides that probate courts shall have original jurisdiction in regard to the appointment of conservators. Section 226, *Id.*, provides for appeals from judgments of the probate courts to the circuit courts, "and upon such an appeal the case shall be tried *de novo:*" Held, that where an appeal was taken from a judgment declaring a person insane, but not appointing a conservator, and the circuit court also found him insane, the circuit court had jurisdiction to appoint a conservator for his estate.—Snyder v. Snyder, Ill., 31 N. E. Rep. 303.

45. Insanity—Discharge of Guardian. — Where the guardian of an insane ward was discharged as being an unsuitable person, and no other guardian was appointed, in ejectment by the lessee of the ward, under a lease made after the guardian was discharged, the decree adjudging the ward insane is not conclusive of his insanity when the lease was made.—Willworth v. Leonard, Mass., 31 N. E. Repp. 299.

46. Insurance—Assignment by Beneficiary.—As provided by a policy of insurance, the sum due thereon at the insured's death was paid by the company to a trustee therein named for the benefit of the insured's daughters. One of these daughters had entered a home for incurables, and, in consideration of care and support during life, assigned to such home "all moneys, rights, credits, goods, chattels, and effects now belonging to me, or to which I am in any way entitled," and agreed to assign any other property which she might receive or become entitled to. She died before her father: Held, that the home was entitled to such daughter's share of the money in the hands of the trustee.—Hewlett v. Home for Incurables of Baltimore City Md., 24 Atl. Rep. 324.

47. Insurance—Construction of Contract.—A warehouse five stories high with a common outer wall, and two partition walls dividing the building into three compartments on each floor, with doors eight feet square in each of the walls between the several compartments in each of the five stories, the entire structure being under one management and devoted to the same use, is but one building, within the meaning of a reinsurance compact, which limited the liability of an insurance company to $5,000 in any one building or risk.—German-American Ins. Co. v. Commercial Fire Ins. Co., Ala., 11 South. Rep. 118.

48. Insurance—Severable Contract.—A policy of fire insurance, issued by the defendant, which, for a premium in gross, insured the plaintiff to the amount of $20 on their store-house, and $3,800 on their stock of goods therein, contained a condition that, "if the building intended to be insured stands on ground not owned in fee-simple by the assured, the policy shall be void, unless consent in writing by the company be indorsed thereon." Within the period covered by the policy the house and goods were destroyed by fire, and it appeared that the plaintiffs did not own in fee-simple the ground on which the building stood. In an action on the policy, held, that the contract is severable, and that the breach of the condition as to the title to the land does not defeat the plaintiff's right to recover for the loss of the stock of goods insured by the policy.—Coleman v. New Orleans Ins. Co., Ohio, 31 N. E. Rep. 279.

49. Insurance—Subrogation.—The trustee of property destroyed by fire released defendant, whose negligence caused the fire, from all claims arising therefrom; it being also agreed that the release did not affect the trustee's claims against insurance companies for loss caused by the fire, which claims should be in addition to the consideration paid for the release. In an action by the trustee on a policy of insurance covering the destroyed property it was adjudged that the agreement between the trustee and defendant covered the loss by explosion only, and not the loss by fire, and did not release the insurance company: Held, that such release was not a bar to an action against defendant by an insurance company who had paid its share of the loss.—People's Natural Gas Co. v. Fidelity Title & Trust Co., Penn., 24 Atl. Rep. 339.

50. Insurance—Waiver of Conditions.—In a suit on a fire insurance policy defense was made that a gasoline stove was used in the building insured, though prohibited by the policy. This prohibitory clause was waived by the agents writing the insurance, who knew of the use of gasoline on the premises, and subsequent agents, though aware of its use, did not cancel the policy: Held, that the insurance company was bound by the waiver and acquiescence of its agents.—Farmers' & Merchants' Ins. Co. v. Nixon, Colo., 30 Pac. Rep. 42.

51. Insurance—Waiver of Conditions.—The fact that an insurance agent, when notified by the assured that the premises had become vacant, said that it was all right as long as he notified the agent, is not a waiver of a provision in the policy that it shall be void if the premises become vacant, where the policy also provides that no part of its conditions shall be waived, except in writing signed by the secretary.—O'Brien v. Prescott Ins. Co., N. Y., 31 N. E. Rep. 265.

52. Interest—Days of Grace.—In computing the days of grace allowed in a bond for the payment of interest the day when the interest became payable will not be counted. The day of payment being July 29th, 30 days of grace will have expired on August 29th.—Serrell v. Rothstien, N. J., 24 Atl. Rep. 369.

53. Intoxicating Liquors—Revocation of Liquor License.—The expressly authorized revocation by the court of a license to sell intoxicating liquors upon conviction of the licensee of a violation of the ordinance, does not constitute a "punishment," within the meaning of the constitution, so as to remove such cases beyond the jurisdiction of the justices of the peace.—State v. Harris, Minn., 52 N. W. Rep. 387.

54. Judgment—Equitable Relief.—A bill in equity will not lie to restrain the collection of a judgment on the ground that it was recovered upon a prior judgment, which was recovered on a note which the judgment creditor held as collateral security, and that the debt for which said note was collateral had been paid, where such payment was made 15 years before the recovery of the judgment sought to be enjoined, and the judgment debtor might have ascertained that fact by inquiry, since the judgment debtor had an adequate remedy at law before the rendition of the second judg-

ment by motion to have the prior judgment satisfied of record.—HARDING v. HAWKINS, Ill., 31 N. E. Rep. 307.

55. JUDGMENT BY CONFESSION.—Under Rev. St. 1889, § 2230, which authorizes a judgment by confession to be entered against a debtor on a verified statement of the amount for which the judgment may be rendered, which statement must show the facts out of which the debt arose, and "that the sum confessed therefor is justly due or to become due," where the indebtedness is evidenced by a note given for borrowed money, it is sufficient to say so, describing the note; and a statement in terms that the debt "is justly due or to become due" is not required.—CLAFLIN v. DODSON, Mo., 19 S. W. Rep. 711.

56. LANDLORD AND TENANT — Lease.—A lease for a term of five years gave the lessee the privilege of an extension for a further period of five years "by notice in writing" to the lessor at least three months before the expiration of the first term: Held that the lessor could by parol waive written notice and accept verbal notice, so as to extend the term, such extended term being part of the original contract, and the statute of frauds, requiring all estates in land for three years or more to be evidenced in writing, having no application thereto.—MCCLELLAND v. RUSH, Penn., 24 Atl. Rep. 354.

57. LANDLORD AND TENANT — Lease of Furnished House.—In a lease of a completely furnished house for a single season there is an implied agreement that the house is fit for immediate habitation. — INGALLS v. HOBBS, Mass., 31 N. E. Rep. 286.

58. LANDLORD AND TENANT—Tenancy at Will.—In the case of a tenancy at will, where the rent is payable monthly, the lease may be determined by a month's notice to quit by either landlord or tenant, but the notice must regularly terminate with some month counting from the beginning of the tenancy. — GRACE v. MICHAND, Minn., 52 N. W. Rep. 390.

59. LIMITATIONS — Actions Concerning Land.—Code Civil Proc. § 382, requiring an action on a contract obligation or liability, express or implied, except a judgment or sealed instrument, to be brought within six years, applies to an action to foreclose an unsealed contract for the sale of land against a vendee in possession.—PLETT v. WILSON, N. Y., 31 N. E. Rep. 336.

60. LIMITATIONS—Judgment.—A person who obtains a judgment against a principal and surety has a cause of action against the surety, who dies before the issuance of an execution and its return *nulla bona*, within the meaning of Rev. St. art. 3218, providing that, "in case of the death of any person against whom there may be a cause of action, the law of limitation ceases to run against such cause of action until 12 months after such death."—LOW v. FELTON, Tex., 19 S. W. Rep. 693.

61. MALICIOUS PROSECUTION.—In an action by a corporation for malicious prosecution the complaint averred that defendants willfully, maliciously, and without probable cause filed a bill for plaintiff's dissolution, wherein they made false, malicious, and slanderous allegations against plaintiff, and widely circulated the same, to destroy public confidence in plaintiff, and did in fact so injure plaintiff, and that having taken no proof the suit was dismissed by order of court: Held that the complaint stated no cause of action.—SUPREME LODGE AMERICAN PROTECTIVE LEAGUE OF BALTIMORE CITY v. MUVERZAGT, Md., 24 Atl. Rep. 323.

62. MASTER AND SERVANT—Contributory Negligence. —In an action by a sailor for personal injuries caused by the negligent handling of a winch while the vessel was discharging cargo, it appeared that the winch was operated by a man from shore, according to whistle signals given by the sailor, and his neglect of the signals caused the injuries. Plaintiff testified that the winchman had informed him of his deafness, and requested him to whistle loudly. The winchman's carelessness had caused the breaking of some barrels before the accident in question, but up to that time (an hour or more) he had obeyed the signals as given Held that it was proper to refuse an instruction that plaintiff's continuing his work with knowledge of the winchman's incompetency would preclude a recovery, since it is for the jury to determine whether or not he was justified in believing, until the accident, that the winchman could handle the winch properly. — NEW YORK & T. S. S. CO. v. ANDERSON, U. S. C. C. of App., 50 Fed. Rep. 462.

63. MECHANIC'S LIEN—Limitation of Action.—Elliott's Supp. § 1093, provides that any person claiming a mechanic's lien must enforce the same within one year: Held, in action by an assignee of a contractor to recover the amount due under a contract, that material men who had filed their claim of lien, but failed to bring suit to enforce the same within one year, were barred from claiming the amount agreed to be due on the contract.—KULP v. CHAMBERLIN, Ind., 31 N. E. Rep. 376.

64. MECHANIC'S LIEN—Property Subject.—A mechanic's lien will extend to the whole of a lot as it was when the contract was made, including buildings annexed to the realty; and a conveyance of a portion of the premises after the contract is made does not affect the lien.—COLLINS v. PATCH, Mass., 31 N. E. Rep. 295.

65. MORTGAGE — Redemption.—Under Rev. St. § 774, providing that any person having a lien on land, otherwise than by judgment, may redeem it from any sale on execution, and that he shall have a lien thereon which he may enforce in a suit to foreclose his lien, a mortgagee from a husband, who redeems the land from a sale on foreclosure of a prior mortgage executed by the husband and his wife, as a lien which he may enforce; and in a suit against the wife she cannot question the validity of the redemption, the holder of the sheriff's certificate having assented thereto, and accepted money paid him.—SCOBEY v. KININGHAM, Ind., 31 N. E. Rep. 355.

66. MUNICIPAL CORPORATION—Dedication of Streets.— When the owner subdivides property into city blocks, streets, and alleys, marking the streets and alleys on the ground, and files the plat, and in selling and making deeds of lots describes them with reference to streets and alleys as platted, the intention to dedicate the streets and alleys is manifest, and the owner retains no interest in the same, though the plat was not acknowledged as required by statute.—HEITZ v. CITY OF ST. LOUIS, Mo., 19 S. W. Rep. 735.

67. MUNICIPAL CORPORATION—Injury to Employee.— The fact that a person, who has been appointed superintendent of the water-works construction of a city under St. 1884, ch. 309, § 24, is under the control of the board of water commissioners, and cannot purchase or furnish anything except by their direction, does not relieve the city from liability for his negligence in opening a trench, when the proper materials for bracing it so as to insure the safety of the workmen are not at hand, any more than for failure to use such materials if they were at hand.—CONNOLLY v. CITY OF WALTHAM, Mass., 31 N. E. Rep. 302.

68. MUNICIPAL CORPORATION—Residence of Councilmen.—Const. art. 6, § 6, provides that "all county, township, and town officers shall reside within their respective counties, townships, and towns." Rev. St. 1881, § 3043, relative to incorporation of cities, provides that a councilman must, "at the time of his election, be a resident of the ward from which he is elected," and, if he thereafter removes from such ward, the council "shall have power to declare his office vacant, and order a special election to fill the vacancy:" Held, that the mere act of removal of a councilman to another ward will not create a vacancy, and the right to declare such vacancy is a matter in the discretion of the council.—STATE v. CRAIG, Ind., 31 N. E. Rep. 352.

69. MUNICIPAL CORPORATION—Street Improvement.— Where a city, in exercising its authority to improve streets, is required, on petition of a majority of the property owners affected, to designate by ordinance the section of a street to be improved, and a section is designated for improvement, and a contract let, the

city cannot thereafter improve only a part of the section so designated, and collect the cost therefor from the proprietors abutting on the part so improved; a tax bill not being legally issuable until the entire work is completed in accordance with the contract, and as designated by the ordinance.—CITY OF INDEPENDENCE V. GATES, Mo., 19 S. W. Rep. 728.

70. MUNICIPAL ORDINANCES — Enactment.—Where a city charter provides that public notice shall be given of the introduction of all ordinances for street improvements, an ordinance introduced upon a notice not indicatory of the substance of the ordinance will be set aside.—STATE V. LONG BRANCH COM'RS., N. J., 24 Atl. Rep. 368.

71. MUNICIPAL IMPROVEMENTS—Sidewalks.—In a city of the second class, no petition is necessary to give the council thereof jurisdiction over sidewalks, for the purposes of repairing or reconstructing the same.—WILKIN V. HOUSTON, Kan., 30 Pac. Rep. 23.

72. MUNICIPAL IMPROVEMENTS—Street Railways.—Under the provisions of a city ordinance requiring street railways to pay the cost of paving streets, a certain railway company became bound to bear the entire cost of paving upon any street occupied by it. An ordinance amending the prior ordinance provided that all streets unpaved at the time of laying the rails shall be kept in order by the railroad company, until the same shall be paved by the property owners, after which they shall be kept in order by the railroad company, and so much of the former ordinance "as provides that the railroad companies shall pave any street that has not heretofore been paved" was repealed: Held, where such railway company occupied a certain street after such amendment, it was not liable for the original paving of such street.—LEAKE V. CITY OF PHILADELPHIA, Penn., 24 Atl. Rep. 351.

73. MUTUAL BENEFIT INSURANCE.—Acts 1888, ch. 429, authorizing the incorporation of "fraternal beneficiary organizations," provides that "any corporation duly organized as aforesaid, which does not employ paid agents" in soliciting business, "and which conducts its business as a fraternal society on the lodge system," may pay a benefit to the member or his family: Held, that where a corporation, organized under such act, provided for the payment of a benefit to members at the end of a year out of a fund created by assessments levied for that purpose, but employed paid agents to solicit business, members to whom such benefit certificates had been issued might refuse to pay further assesments without forfeiting payments already made, and were entitled to have the fund so accumulated distributed among the certificate holders.—FOGG V. SUPREME LODGE OF THE ORDER OF THE GOLDEN LYON, Mass., 31 N. E. Rep. 289.

74. NEGLIGENCE — Blasting under Contract with United States.—Where defendant read in evidence without objection a contract purporting to have been made by him with one of the corps of engineers of the United States army, "in behalf of the United States of America" and approved by the chief of engineers, U. S. A., authorizing him to do certain blasting, whereby were occasioned the injuries for which damages were sought, and refrained from offering other evidence to prove his authority from the United States, because the court, without objection on plaintiff's part, stated that the authority was not denied, and that it could not be questioned, because the contract had been proved, plaintiff could not subsequently insist that the authority was not shown.—BENNER V. ATLANTIC DREDGING CO., N. Y., 31 N. E. Rep. 328.

75. NEGLIGENCE—Pleading.—A complaint for personal injuries received at a railroad crossing, which shows that plaintiff was an infant driving a two-horse team, is not subject to demurrer, as showing contributory negligence, where the age of plaintiff is not given.—LOUISVILLE, N. & ST. L. R. CO. V. PRITCHARD, Ind., 31 N. E. Rep. 358.

76. NEGLIGENCE — Turnpike.—Plaintiff, while driving along a turnpike on a dark night, with a lantern on the east side of his carriage, drove out of the traveled way to the west, where the ground sloped gradually from the road to the surface of the adjacent ground, a descent of three feet, and was injured by being thrown out: Held, that this was not the result of negligence in failing to maintain a reasonable protection from a dangerous declivity, threatening the safety of travelers making proper use of the highway.—SPEER V. GREENCASTLE & C. GRAVEL-ROAD CO., Ind., 31 N. E. Rep. 381.

77. NEGOTIABLE INSTRUMENTS—Notice of Dishonor.—The condition of demand of payment and notice of non-payment of a promissory note may be waived or dispensed with by an indorser as well after as before maturity. No new consideration is needed to support such waiver.—LOCKWOOD V. BOCK, Minn., 52 N. W. Rep. 391.

78. NEGOTIABLE INSTRUMENTS—Pleadings.—Since the holder of negotiable paper, to which the maker has a valid defense against the original payee, has the burden of showing that he is a *bona fide* holder for value without notice of such defense, in an action on a note by an indorsee, where the complaint does not allege that the transfer was made without notice of any defenses, defendant may plead his defenses without alleging notice thereof to plaintiff.—BUNTING V. MICK, Ind., 31 N. E. Rep. 378.

79. NOTICES—Services by Mail.—Code Civil Proc. §§ 1012, 1013, provide for service by mail in certain cases, and that such service shall be by depositing the notice or other paper in the post-office, addressed to the person on whom it is to be served at his office or residence: Held that, where a notice attempted to be served by mail was actually received by the person for whom it was intended, the service was sufficient, though it was mailed.—HEINLEN V. HEILBRON, Cal., 30 Pac. Rep. 8.

80. NUISANCE — Removal.—Where a private way is obstructed by one of several persons claiming the land over which the way is situated, a proceeding to remove the obstruction as a nuisance may be brought against the person who erected it, without joining the other claimants as co-defendants.—CONNER V. HALL, Ga., 15 S. E. Rep. 308.

81. PARTIES — Misjoinder.—The misjoinder of two parties as plaintiffs, when the cause of action is in one alone, is no ground for a dismissal of the complaint as to both. It is a mere irregularity which may be corrected at any time, before or after judgment, by striking out the name of the party improperly joined.—WIESNER V. YOUNG, Minn., 52 N. W. Rep. 390.

82. PARTNERSHIP—Dissolution.—An agreement, whereby a certain person is to receive so much of the profits of a partnership, until its dissolution, "whether by the death of either of the partners," or by limitation in accordance with the partnership articles, must be construed as terminated by the death of either partner, even though the parties may have been mistaken in supposing that death would operate as a dissolution.—WILLIAMS V. PHILADELPHIA TRUST, SAFE DEPOSIT & INS. CO., Penn., 24 Atl. Rep. 346.

83. PARTNERSHIP—Patents for Inventions.—Two persons entered into articles of copartnership in the "art and trade" of making "gas black," and agreed to "do their endeavors to the utmost of their skill and ability for their mutual advantage," neither to engage in any other business, and, in case of death of either, his interest in the firm should become the property of the survivor. By their combined efforts and skill, they invented a machine and patentable device of great utility and value in their business: Held that, on the death of one partner before letters patent were obtained, the invention passed to the survivor, as partnership property, instead of the heirs of the deceased partner.—BLOOD V. LUDLOW CARBON BLACK CO., LIMITED, Penn., 24 Atl. Rep. 348.

84. PAYMENT.—The amount paid in the settlement of its tax, made by the defendant with the city council, having been placed in the treasury of the corporation, no action having been taken towards setting aside the

settlement, and no tender having been made of the amount received in settlement, the plaintiff is without right to prosecute its suit for taxes settled, for an amount less than claimed, as shown by the receipt produced.—CITY OF NEW ORLEANS V. METROPOLITAN BANK, La., 11 South. Rep. 146.

85. PRINCIPAL AND AGENT — Husband and Wife.—A man is not bound by a contract for the sale of his land made by a broker in accordance with letters and telegrams sent by his wife, who, although attending to his correspondence and the rent of his property, had no written authority to contract for him, and who sent the letters and telegrams in question without informing him of their contents.—EDWARDS V. TYLER, Ill., 31 N. E. Rep. 312.

86. PRINCIPAL AND AGENT — Powers of Agent.—An architect who is superintending the construction of a building, and who has a contract for the plastering, which implies that he shall furnish the mortar, has no power by virtue of his possession merely, and without authority from his employer, to have the mortar carted to the premises, instead of having it made there, or to so vary the contract of his employment in any other respect as to make the employer pay a higher price for the mortar than is contemplated therein.—MCINTOSH V. HASTINGS, Mass., 31 N. E. Rep. 288.

87. PRINCIPAL AND SURETY — Administrator.— The cause of action of a surety on a note of a deceased insolvent does not accrue till he has had to pay it, and, where he does not pay it till after an action by decedent's administratrix to marshal assets and for an accounting of her trust has ended, in which the holder of the note received nothing, and she pleads *plene administravit* to his action to recover the amount against her, he is entitled to a judgment *quando acciderint*.—ROSBOROUGH V. MILLS, S. Car., 15 S. E. Rep. 281.

88. PRINCIPAL AND SURETY — Husband and Wife.—A husband making an exchange of lands with another person, having, in receiving the land for which his own was exchanged, gratuitously caused the conveyance to be made to his wife jointly with himself, and at the same time, in order to raise money to remove an incumbrance from the land which he gave in exchange, and to pay the agreed difference between the two tracts, having borrowed money upon a joint note executed by himself and wife and upon an absolute deed made by them, conveying a portion of the land received to the lender to secure the loan, the lender giving a bond to reconvey to the husband alone, the facts did not make a case of suretyship by the wife for the husband, but one of borrowing for the mutual benefit of both.—WALDROP V. VEAL, Ga., 15 S. E. Rep. 310.

89. PROCESS—Service— Amendment of Return.—After a sheriff or deputy sheriff has gone out of office, he cannot, without some order of the court giving direction in the matter, amend an incomplete or defective return of service made by him while in office.—BEUTELL V. OLIVER, Ga., 15 S. E. Rep. 307.

90. PROCESS—Summons—Amendment of Complaint — A complaint, which has been served, and which seeks recovery for a certain amount, cannot be amended without furthur service so as to include upon default interest accruing after the commencement of the action, or otherwise to enlarge the amount of recovery, although such an amendment may not have been necessary, and the interest could have been recovered under the complaint as originally filed.—SCHUTTLER V. KING, Mont., 30 Pac. Rep. 25.

91. QUIETING TITLE — Burnt Records Act.— It is not necessary to the introduction in evidence of extracts or minutes from destroyed records, under Rev. St. 1891, ch. 116, § 29, which makes such minutes admissible in evidence where the original instruments and the record have been destroyed, that proof should be made of the loss of the antefire abstract of title, since that would be to require secondary evidence of secondary evidence.—CONVERSE V. WEAD, Ill., 31 N. E. Rep. 314.

92. RAILROAD COMPANIES—Breach of Contract.—In an action by a quarry company against a railroad company for damages for breach of contract to furnish strong and inspected cars for the transportation of stone, the complaint alleged that a car was delivered which the railroad inspector had failed to inspect; that the car was defective; that the defects were hidden and unknown to the quarry company, but would have been discovered on proper inspection by the railroad company; and that by reason thereof, and without fault of the quarry company, the car broke loose, ran down a grade, and killed a quarryman: Held, that the facts stated were sufficient to show an inexcusable breach of duty by the railroad company.—HOOSIER STONE CO. V. LOUISVILLE, N. A. & C. Ry. Co., Ind., 31 N. E. Rep. 365.

93. RAILROAD COMPANIES — Crossing — Negligence.— The running of railroad trains over crossings in the open country at a high rate speed is not negligence *per se*.—CHILDS V. PENNSYLVANIA R. CO., Pa., 24 Atl. Rep. 341.

94. REAL ESTATE AGENT — Commissions. — Where a real estate broker procures a purchaser of land at the agreed price, and the owner sells to him for a less sum, on discovering that the land does not contain the supposed number of acres, the broker is entitled to his commission at the agreed rate on the latter sum. — HOEFLING V. HAMBLETON, Tex., 19 S. W. Rep. 689.

95. RELEASE—Evidence of Delivery.—Where, on an alleged agreement showing a release of a lien contained in a conveyance of land, a surrender of the notes given for the purchase money as fully paid and satisfied, and the taking of a new unsecured personal promise for the balance, in consideration of the payment of part thereof before due, there is a conflict as to the real agreement, and whether the release was delivered in accordance therewith, the release itself is admissible on the question of delivery.—PORTER V. METCALF, Tex., 19 S. W. Rep. 696.

96. REMOVAL OF CAUSES — Sale of Real Estate.— A special proceeding by an administrator to obtain a license to sell the real estate of his intestate for the payment of debts is within the act of congress providing for the removal of "any suit of a civil nature, at law or in equity" from a State to a federal court, though the federal court could not have had original jurisdiction of the proceeding.— ELLIOTT V. SHULER, U. S. C. C. (N Car.), 50 Fed. Rep. 454.

97. REPLEVIN—Action on Bond.—Where a party commences an action in replevin, obtains possession of the property in dispute, and then voluntarily dismisses his suit, without prejudice, but still retains the property secured under the order of delivery, the defendant may maintain an action upon replevin bond, if the title to such property be in him, and recover damages for the value of the property so taken.— MCKEY V. LAUFLIN, Kan., 30 Pac. Rep. 16.

98. REPLEVIN— Cattle Held in Quarantine.—When an action of replevin is brought by the owner to recover possession of cattle held by a sheriff under an order issued by the live stock sanitary commission requiring him to hold said cattle in quarantine, said order constitutes a sufficient *prima facie* justification of the sheriff's refusal to return said cattle to the owner during the quarantine period, and until the expense of holding the same in quarantine is paid.— HARDWICK V. BROOKOVER, Kan., 30 Pac. Rep. 21.

99. RES JUDICATA. — Where, in a suit to recover damages for breach of contract to furnish materials for performance of a contract, defendant pleaded in bar a former recovery, the record not showing whether upon an account stated or on a *quantum meruit* basis, plaintiff's cross-examination, disclosing that he testified on the former trial about all the work he did under that contract and the prices paid, and that he was "then claiming balance due me on account of work done including all the work done under the contract," was competent, and sustains the plea in bar.— MCTIGHE V. MCLANE, Ala., 11 South. Rep. 117.

100. RES JUDICATA.—Where judgment was recovered on a policy against an insurance company which made

no counterclaim or demand for deduction on account of premiums past due on the premium note, such judgment is no bar to a future action for the premiums.—INDIANA FARMERS' LIVE STOCK INS. V. STRATTON, Ind., 31 N. E. Rep. 380.

101. SALE.— A purchaser of lumber, who declines to accept because it is not of the stipulated quality, is not confined to a rescission of the contract, and a recovery of the money paid for freight and customs duties, and for storage, but may recover also damages, as for a breach of the contract.—TAYLOR V. SAXE, N. Y., 31 N. E. Rep. 258.

102. SALE—Purchase-money Notes.—The right to collect promissory notes given for the purchase money out of personal property sold conditionally, the seller retaining title is extended by the act of October 22, 1887, to the holder of such notes, and is not confined to the original payee. Consequently a transfer of such notes since the passage of said act, even if made without recourse on the payee, will not operate to divest the notes of their character as a debt for purchase money.—CADE V JENKINS, Ga., 15 S. E. Rep. 292.

103. SCHOOLS — Power of Trustees.—Where the principal of a normal school was legally employed and allowed to serve a portion of the school year without objection, he cannot be regularly discharged by the board of trustees for immoral conduct, without a hearing.— TRUSTEES OF STATE NORMAL SCHOOL V. COOPER, Pa., 24 Atl. Rep. 348.

104. STOCKBROKERS — Purchase of Stock. — The fact that defendants, who were stockbrokers, directed the purchase of certain stock in pursuance of a contract with their principal to carry it for him on a margin, such direction does not authorize the broker from whom the stock was purchased to make a transfer thereof to defendants on the books of the company.—GLENN V. GARTH, N. Y., 31 N. E. Rep. 344.

105. TAXES — Collection. — As the statute of Kansas makes special provisions for the collection of taxes imposed thereunder, such taxes are not a debt, in the ordinary sense of that term, and consequently an action prescribed by the Civil Code will not lie for their recovery.— BOARD OF COM'RS OF STAFFORD COUNTY V. FIRST NAT. BANK OF STAFFORD, Kan., 30 Pac. Rep. 22.

106. TAX SALE— Redemption. — The right of a purchaser other than a State, or some governmental agency acting as such, at a sale of land for taxes under a statute which provides that the purchaser or his assignee shall have a conveyance of the land unless the land shall be redeemed within one year next succeeding the sale, is a contract right; and a statute, passed subsequent to such sale, which proposes to extend the period allowed by the former act for redeeming the land from the sale, is a violation of the contract, and of no effect as to such purchaser or his assignee.—HULL V. STATE, Fla., 11 South. Rep. 97.

107. TAX TITLE. — Notwithstanding a tax title may be inherently void, it is entitled to be respected, and upheld as valid, until judicially investigated, and its nullity pronounced; and an assessing officer may act upon its *prima facie* validity in making an assessment. It is not made his duty to investigate prior assessments for the purpose of ascertaining their possible illegality. —PRESCOTT V. PAYNE, La., 11 South. Rep. 140.

108. TELEGRAPH COMPANIES—Penalty.—The act of October 22, 1897, "to prescribe the duty of electric telegraph companies as to receiving and transmitting dispatches, to prescribe penalties for violations thereof, and for other purposes," being penal in its nature, must be strictly construed. Accordingly, the sendee of a message is not, under this act, entitled to recover the penalty therein named for a failure by the company to deliver such message with due diligence, unless the charges thereon were prepaid or tendered by the sender, or unless there was failure to deliver, or delay in delivering, on or after payment or tender by the sendee or his agent.—LANGLEY V. WESTERN UNION TEL. CO., Ga., 15 S. E. Rep. 291.

109. TRADE-MARK—Injunction.—A cigar manufacturer, to protect his trade-mark, may have an injunction restraining a box maker from furnishing boxes with those trade-marks to other cigar manufacturers, and against all who knowingly combine for that purpose. —CUERVO V. JACOB HENKELL CO., U. S. C. C. (N. Y.), 50 Fed. Rep. 471.

110. TRESPASS TO TRY TITLE — Res Judicata.—The children of an intestate by a first marriage, who claim land as the separate property of their mother, cannot mantain a trespass to try title against the widow and children by a second marriage, where they had previously applied for and obtained a partition of such land between themselves and the widow and children by the second marriage in the court where the administration of the estate was pending.—PEARCE V. JACKSON, Tex., 19 S. W. Rep. 690.

111. TRIAL — Directing Verdict. — In an action for breach of a contract to buy land the court properly refused to direct a verdict for the plaintiff where there was evidence sufficient to support a decree for defendants, who alleged that they had only agreed to purchase at their option, and that the terms of the contract had been omitted by mistake, and prayed that it be reformed.—SOUTHARD V. CURLEY, N. Y., 31 N. E. Rep. 330.

112. TRIAL—Instructions—Custom.—Where, in an action for the price of worsted yarn, the issue was whether the sale, which was "net" weight, was of yarn simply, or included paper tubes on which it was wound, rulings by defendant on the hypothesis that the sale was one of yarn only were rightfully refused.—NONANTUM WORSTED CO. V. NORTH ADAMS MANUF'G CO., Mass., 31 N. E. Rep. 293.

113. TRIAL—Remark of Judge.—If the counsel for the accused makes the point that the solicitor general is misstating the testimony, when in fact he is not, and applies to the court for interference, it is not error for the presiding judge to rule and announce that the testimony was as the solicitor general had repeated it when the point was raised.—BARNES V. STATE, Ga., 15 S. E. Rep. 313.

114. TRUST—Evidence.—In a suit by a sister to establish a resulting trust in land of which her brother died seised, the evidence showed that said land was bought partly with money belonging to their deceased father's estate, and partly earned by the brother and sister in cultivating the land before it was purchased; that the sister did more than the brother towards earning said money; and that the brother frequently admitted that the sister had the same interest in the land that he had: Held, that there was a resulting trust for the benefit of the sister in half of the land.—STEPHENSON V. MCCLINTOCK, Ill., 31 N. E. Rep. 310.

115. TRUST DEEDS—Title Conveyed. — Trust deeds given as security and mortgages containing a power of sale vest the legal title in the trustee; the equitable title or equity of redemption remains in the "trustor" or mortgagor.—STEPHENS V. CLAY, Colo., 30 Pac. Rep. 43.

116. VENDOR AND VENDEE — Contract.—Where one who has contracted for the purchase of land as the real party in interest caused the contract therefor to be made in the name of his clerk or agent, held that, to be entitled to the benefits of the contract, he must also be bound by the conditions and stipulations of the parties, made by his consent and direction, touching the terms and mode of performance thereof.—SHERWOOD V. WILKINS, Minn., 52 N. W. Rep. 394.

117. VENDOR AND VENDEE—Parol Contract—Consideration.—The trustees of a society, to which the owner of certain land was indebted, purchased such land at a sheriff's sale, and the owner and his wife executed to the trustees a quitclaim deed to the land: After one of the trustees had died and the other had become incapacitated by old age, the heirs of the original owners claimed an interest in the land, and the successor of the dead trustee entered into a parol agreement to convey to the heirs one-half of the land, the heirs giving a quitclaim deed of their interest: Held, that

equity would not enforce the contract at the suit of the heirs, as there was no consideration.—HENRICI V. DAVIDSON, Penn., 24 Atl. Rep. 334.

118. WATER-COURSE—Diversion.—The owner of upland through which a stream flows will be restrained from changing the natural course of the stream to protect his meadow, where such change would so increase the current of the stream as to damage the mill-dam of the owner of the lower land by washing the banks and filling the dam with sediment.—KAY V. KIRK, Md., 24 Atl. Rep. 326.

119. WILLS — Construction. — Testatrix placed her property in trust for the use of her sister, and provided that after the sister's decease certain legacies be paid from the trust property, among which was one of $2,000 to a niece. The will then provided that "the rest and residue of all my property of every kind, including any and all legacies which may fall from the death of the legatee or legatees," be put in trust for her niece, "but, if she die without issue, I then direct that the principal be divided into three equal portions," etc. The niece died without issue, before the sister's decease: Held, that the $2,000 legacy to the niece belongs to the residuum estate, to be divided under the will, rather than to the administrator of the niece.—POLLOCK V. FABNHAM, Mass., 31 N. E. Rep. 298.

120. WILLS—Devise to City.—A devise of lands to a city "for a public park" is none the less valid because the lands lie without the city limits.—LESTER V. MAYOR, ETC., OF CITY OF JACKSON, Miss., 11 South. Rep. 114.

121. WILLS—Nuncupative.—It is essential to the establishment of a nuncupative will that it shall, among other things, clearly appear: (*a*) That at the time of uttering the words relied on, the testator had a present, consistent intention that the very words uttered should constitute his will, and that the witnesses so understood his language. (*b*) That the testator shall, by his own language, before pronouncing the will, have indicated to those about him, or some of them, that they were to witness that the very words he presently uttered were to constitute his last testament.—IN RE MALE'S WILL, N. J., 24 Atl. Rep. 370.

122. WILLS—Precatory Trusts.—Testator devised his whole estate to his wife, and requested that, if she should not require the whole of the estate as a support, she would will the remainder at her death to the children of testator's brother: Held, there being no certainty as to the existence of a remainder, that no precatory trust arose in favor of the children, and that the devise to the wife was absolute.—BRYAN V. MILBY, Del., 24 Atl. Rep. 333.

123. WILLS — Restriction.—Where a bequest is first made in terms which plainly vest an immediate estate, the subsequent addition of equivocal expressions, having a contrary tendency, will not be accepted as indicative of a contrary intention.—KIMBLE V. WHITE, N. J., 24 Atl. Rep. 400.

124. WILLS—Undue Influence.—In a contest of a will on the ground of undue influence, it was proper to instruct that "even undue influence cannot, of itself, defeat a will offered for probate, unless the evidence proves (1) that the influence was in fact exercised; (2) that its exercise was effectual in producing the particular will offered."—KNOX V. KNOX, Ala., 11 South. Rep. 125.

125. WITNESS — Privileged Communications.—Code Civil Proc. § 834, declaring that a physician shall not be allowed to disclose as a witness "any information which he acquired in attending a patient in a professional capacity, and which was necessary to enable him to act in that capacity," does not prohibit a physician from testifying that he attended a person in his professional capacity, and that the patient was sick, or from giving the number of times and the dates when the patient applied to him, and the places where he attended him for the purpose of showing that the patient was not in good health at a certain time.—PATTEN V. UNITED LIFE & ACC. INS. ASS'N N. Y., 31 N. E. Rep. 342.

ABSTRACT OF DECISIONS OF MISSOURI COURTS OF APPEAL.

ST. LOUIS COURT OF APPEALS.

AGENCY COUPLED WITH INTEREST—Termination of by Death.—When an agency coupled with interest, is created by a contract between the parties, which contract only imposes on the parties the exercise of ordinary business judgment, the contract and consequently the agency are not rescinded by the death of one of the parties, since the executors of the deceased can exercise such ordinary business judgment. In case the contract called for special skill or ability on the part of the deceased in order to carry out the contract, such as executors do not ordinarily possess, it would be otherwise. Reversed.—LOCKHART V. FORSYTHE.

ATTACHMENT—Debt Contracted Fraudulently.—The intention not to pay an obligation, existing at the time such obligation incurred, amounts to a fraudulent contracting of a debt within the meaning of the attachment law of this State. Affirmed.—BLACKWELL V. FRY.

ATTACHMENT—Grounds.—An agreement by the vendee to make and deliver notes in payment of and a mortgage on the chattels purchased, on delivery of the chattels by the vendor, is an agreement that the chattels are to be paid for on delivery within the meaning of the attachment law. Reversed.—AULTMAN & CO. V. DAGGS.

ATTORNEY AND CLIENT—Privileged Communications.—Between lawyer who is also a notary and who merely takes acknowledgment to a deed, making some suggestions of his own motion about the deed, and the party whose acknowledgment is taken the relation of attorney and client does not exist, and communications made to the lawyer are not priviliged matter. Reversed.—AULTMAN CO. V. DAGGS.

BENEVOLENT ORDERS — Acquiescence in Expulsion Form.—In case of a void expulsion or suspension, from a benevolent order, when the expelled or suspended member takes no steps of any kind to secure his reinstatement, allows dues which had accrued and were even payable prior to the date of his expulsion to remain unpaid, neither tendering these or subsequent dues, he must be taken to have consented to the sentence of expulsion or suspension, and the beneficiaries of his certificate cannot recover. Affirmed.—GLARDON V. SUPREME LODGE K. OF P.

CONTRACT IN WRITING—Subsequent Agreements.—It must be presumed that a written contract contained everything understood between the parties in reference to the subject-matter, but this rule does not exclude subsequent parol agreements, and especially those with a different party, touching the subject-matter of the written contract, which subsequent agreements may of themselves afford causes of action. Affirmed.—MCLAREN REAL ESTATE & INVEST. CO. V. LINDSAY.

COURT OF APPEALS—Jurisdiction.—Where a suit for $5,000 was brought for the death of a child, and a judgment for plaintiff in the sum of one hundred and twenty-five dollars was rendered, and appeal was taken by plaintiff, the court of appeals has no jurisdiction, as the evidence does not show conclusively that the amount of damages in any event must be within the jurisdiction. Transferred to supreme court.—LEALY V. DAVIS.

CREDITOR'S BILL—Jurisdiction of State Courts.—The circuit court of this State has jurisdiction to entertain a suit in the nature of a bill in equity to subject, to the satisfaction of a judgment rendered in the U. S. Court, assets which could not be reached by execution at law. Affirmed.—BUSH V. ARNOLD.

XUM

CRIMINAL LAW—Slander—Evidence.—Where defendant is on trial for criminal slander, evidence that he made similar statements to those named in the information at a time subsequent to that there stated, may be introduced in corroboration of the testimony for the State, and to show malice. Affirmed.—STATE V. BLANKENSHIP.

EQUITY PLEADING—Bill of Interpleader—Defects.—If a bill of interpleader should affirmatively show, that neither of the defendants is entitled to the money, or that one of the defendants is entitled to the money to the exclusion of the others, it will be bad on demurrer. A simple statement that the plaintiff holds a certain fund as trustee, and that two or more defendants claim as beneficiaries of she trust, without more, is not a sufficient statement to maintain such bill. Affirmed.—ROBARDS V. CLAYTON.

FAMILY SETTLEMENTS — When Broken. — Courts of equity are very loath to disturb family settlements, except for cogent reasons and upon strong evidence. A court of law exercising powers of both judge and jury will affirm such settlements unless the plaintiff is entitled to have it broken on clear evidence and strictly legal grounds. Affirmed.—DE HATRE V. DE HATRE.

FRAUDS, STATUTE OF—Must be Pleaded.—Parol agreements accompanying and being a part of the terms of a written agreement in respect to the sale of lands, and personalty within the statute, which are referred to in the written agreement, may be admitted in evidence unless statute of frauds is pleaded as a defense. Reversed.—RANDOLPH V. FRICK.

GARNISHMENT — Burden of Proof.—The presumption is not in favor of the plaintiff on a question between him and the garnishee, whether the latter has assets in his hands, the *onus* is on the plaintiff. If garnishee either in his answer or in his reply to the denial admits the reception at recent period of a larger sum than that admitted by the answer to be now in his hands, then the burden is on him to show disbursement of such sum on orders of defendants. Affirmed. —BUNKER V. HIBLER.

INDICTMENT — Libel. — An indictment for criminal libel alleging two separate publications of the same libel in one count, should be quashed on the ground that it alleges two distinct offenses in the same count, since each separate publication is a distinct offense. Affirmed.—STATE V. HEALY.

INJUNCTION—Bill for Must Show What.—In a bill for injunction against the action of school directors, the plaintiffs must show the extent to which their interest, if at all, were injuriously affected by the irregular actions of the directors, or that they were suing on behalf of other tax-paying citizens. Affirmed.—FUGATE V. MCMANAMA.

JURIES—Instruction of Must Include What.—An instruction, which of itself undertakes to cover the whole case, and authorize the finding for either party, must not exclude from the jury any material question presented by substantial evidence on either side. Reversed.—HOHSTADT V. DAGGS.

JUDGMENT—When Rendered by Lower Court Without Re-trial —When there has been a simple reversal and remanding, unless legal propositions only are involved which depend solely upon conceded or written evidence, the legal effect of which the court construed upon the appeal, it will not be competent for the lower court to give judgment without a new trial. Reversed. —STATE V. CHANEY.

JURIES—Instructions to.—It is error to instruct the jury, that if servants in the defendant's employ were guilty of an unlawful act causing the injury they should find for the plaintiff. It should state, if servants while engaged in employer's business and while acting within the scope of their employment were so guilty. The error in such instruction is not cured by giving one properly stating the law at the instance of defendant. Reversed.—VOGELLI V. PICKEL MARBLE & GRANITE CO.

JUSTICE OF THE PEACE.—Appeal From—When Void.—Under the statutes of this State an application for an appeal from a justice of the peace can only be made by act of the party, who desires to appeal, in appearing before the justice before the expiration of the prescribed time, and tendering the statutory bond and affidavit, or requesting the justice to prepare them. The granting by the circuit court of an appeal before such application is void. Reversed.—KELM V. HUNCKLER.

JUSTICE OF THE PEACE—Appeals From.—Section 6340 R. S. allowing the filing in the circuit court of affidavit and bond for appeal from a justice, when the justice has allowed the appeal without or upon defective bond or affidavit, does not apply in a case, where it does not appear from the transcript that the appeal was allowed by the justice. Reversed.—DEVORE T. STACKLER.

LEASE—Recovery on Covenants by Assignee.—Where A leases for a term of years to B, who makes covenants as to the condition in which premises shall be kept and turned over, and after expiration of the term, B holding over under the lease, A assigns the reversion to C, C can only recover for such breaches of covenants consonant with a letting from month to month, as occurred after assignment. Reversed.—HAEUSSLER V. HOLMAN PAPER BOX CO.

MASTER'S LIABILITY—Defective Machinery.—In a suit by a servant against his master for damages for personal injuries, the result of an accident caused by running defective machinery, the plaintiff must prove the machinery defective or unfit for use, the defendant's knowledge of this, or that he by exercise of due diligence would have known it, that such defect was the direct and immediate cause of the accident, without which it would not have happened. Reversed.—BREEN V. ST. LOUIS COOPERAGE CO.

NEW TRIAL—Motion for When Filed —The statute requiring a motion for a new trial to be made within four days after the judgment means four secular days, excluding Sundays, and does not mean four judicial days, or days on which the court is in session. Affirmed.—BECKMANN V. PHOENIX INS. CO.

PARENT AND CHILD—Parent Entitled to Earnings.—Where A knowingly employs the minor son of B, contrary to B's express wishes, B is presumptively entitled to recover at his election, either what A agrees to pay the boy, or the reasonable value of his services. A is entitled to an abatement for such necessaries as he can show were furnished. Affirmed.—DUNN V. ALTMAN.

PLEADING—Sufficient Statement —A petition stating that the agents and employees, of the defendant railroad, running a train of cars, by exercise of reasonable care could have seen animals on the track, and have stopped train before killing them but negligently failed to do so, and not averring that the agents or employees saw the horses, states a good cause of action. Reversed.—Certified to the supreme court as in conflict with decisions of K. C. Ct. App. in Hoffman v. Railway Co., 24 Mo. App. 546, and Welch v. Railroad Co., 20 Mo. App. 477.—HILL V. MO. PAC. R. R.

WARRANTY IN SALE OF CHATTELS—Conditional.—The fact that an article is entirely worthless for the purpose intended, said purpose being known to the vendor at time of sale, may be set up as a defense to an action for the purchase price, when there is an express or an implied warranty of the fitness of the thing sold, but not where there is a special contract in the nature of a conditional warranty, when the condition has not been complied with by the vendee. Reversed.—BOYER V. NEEL.

WITNESSES—Taxation of Fees.—Witnesses have not such an independent right in the question of taxation of costs as to enable them to maintain an action in their own name for their taxation or retaxation. The decision of the judge and prosecuting attorney under Sec. 4412, R. S. allowing or disallowing costs, where they depend on questions of fact, is conclusive both on the witness and State.—STATE V. OLIVER.

LEGAL DIRECTORY.

ALABAMA.
BIRMINGHAM ..... B. K. COLLIER
BIRMINGHAM (119 1-2 21st St.) ..... L. C. DICKEY
MOBILE ..... CLARK & CLARK
CALIFORNIA.
OAKLAND (906 Broadway) ..... EDWARD A. HOLMAN
COLORADO
DENVER ..... NORRIS & HOWARD
DISTRICT OF COLUMBIA.
WASHINGTON (P. O. Box 38) ..... DUDLEY & MICHENER
FLORIDA.
JACKSONVILLE (5½ West Bay St.) .. CROMWELL GIBBONS
ILLINOIS.
BLOOMINGTON ..... EDWARD E. DONNELLY
CHICAGO (175 Dearborn St) ..... JOHN M. GRIMES
PEORIA (Law & Col.) ... CRATTY BROS., FULLER & GALLUP
SPRINGFIELD (Law & Col.) ..... SANDERS & BOWERS
INDIANA.
RICHMOND ..... HENRY C. STARR
INDIAN TERRITORY.
MUSKOGEE ..... SHEPARD & SHEPARD
KANSAS.
EMPORIA ..... T. N. SEDGWICK
TOPEKA ..... HENRY L. CALL
LOUISIANA.
NEW ORLEANS (5 Carondelet st.) .... GUSTAVE A. BREAUX
MARYLAND.
BALTIMORE (12 St. Paul St.) ..... J. LELAND HANNA
MASSACHUSETTS.
BOSTON (88 School st.) ..... J. W. PICKERING
BOSTON (68 Cornhill st.) ..... LYNDE, HARDING & LYNDE
MICHIGAN.
DETROIT (66 Buhl Blk.) ..... GEORGE H. CARLISLE
MINNESOTA.
MINNEAPOLIS (422 Boston blk.) ..... ALBERT M. SCOTT
MISSOURI.
KANSAS CITY (401 Mass. Bldg.) ..... W. F. HENRY
NEW MEXICO.
ALBUQUERQUE ..... R. W. D. BRYAN
SANTA FE ..... CATRON, THORNTON & CLANCY
OHIO.
CLEVELAND (286 Sup'r) EVERETT, DELLENBAUGH & WEED
PENNSYLVANIA.
PITTSBURGH (435 Grant St) ..... WM. A GOLDEN
SOUTH CAROLINA.
CHARLESTON (Att'ys & Counsellors) ..... SMYTHE & LEE
TEXAS.
AUSTIN (1 & 2 Litten bldg.) ..... Z. T. FULMORE
UTAH TERRITORY.
SALT LAKE CITY ..... SHEPARD, CHERRY & SHEPARD

ST. LOUIS LAW SCHOOL.

Law Department of Washington University, ST LOUIS, MO.

Annual Session, October to June. Course completed in two or three years at option of student. Admits to the Bar. For Catalogues, etc., address the Dean,

WILLIAM G. HAMMOND.

1417 Lucas Place

HENRY HITCHCOCK,

Attorney and Counselor at Law.

404 Market St., ST. LOUIS, MO.

ILLINOIS WESLEYAN UNIVERSITY.

BLOOMINGTON LAW SCHOOL.

Professors: Judge Owen T. Reeves, LL.D., Judge Reuben M. Benjamin, LL.D., John J. Morrisey, LL.B., Jacob P. Lindley, LL.B., Judge C. D. Myers, LL.B. Established 1874. Two years' course. Two daily recitations. Diploma admits to Bar. Complete Law Library. Fall Term opens September 13, 1892. For information, address JUDGE OWEN T. REEVES, Dean,
BLOOMINGTON, ILLINOIS.

CORNELL UNIVERSITY
SCHOOL OF LAW.

Two years' course leading to the degree of Bachelor of Laws. Graduate course of one year leading to the Master's Degree. Full resident Faculty and large corps of non-resident Lecturers. All University courses open without extra tuition to properly qualified law students. Next session opens September 26, 1892. For announcement containing full particulars, address

THE SCHOOL OF LAW,
Ithaca, N. Y.

ALBANY LAW SCHOOL.

Established 1851.

Course, one year. Fall term begins September 13th, 1892. Graduates will please forward their addresses.

Address: DEAN OR SECRETARY,
ALBANY, N. Y.

UNIVERSITY OF MICHIGAN.

Law Department.

The next session opens October 1st. For catalogue, giving full information, address,

J. C. KNOWLTON,
Ann Arbor, Mich.

INDEX-DIGEST
—OF—
Central Law Journal.

Being to Complete Set, Vols. 1 to 30. January 1, 1874, to July 1, 1890. Price, $6.00. Sent prepaid on receipt of amount.

CENTRAL LAW JOURNAL COMPANY,
919 OLIVE ST., St. Louis, Mo.

WE WISH TO PURCHASE

Second hand sets of the

OHIO AND OHIO STATE REPORTS.

Address stating number of vols. and condition,

W. H. ANDERSON & CO.,

Law Booksellers, *Cincinnati, Ohio.*

"That Great Encyclopædia of Law"

Is the U. S. Digest, First Series, from the earliest period to 1870.

The U. S. Digest, New Series, from 1870 to 1887.

The American (U. S. Third Series) Digest, from 1887 to 1892.

WEST PUBLISHING CO.,
ST. PAUL, MINN.

A Question of Saving

Hundreds of Dollars

IS WORTH A MOMENT'S ATTENTION.

THIS IS HOW 'TIS DONE—

U. S. Supreme Court,
U. S. Circuit Courts,
U. S. District Courts,
U. S. Court of Claims,
U. S. Territorial Courts,
U. S. Circuit Court Dist. Columbia,
U. S. Attorney-General Decisions,
U. S. Internal Revenue Decisions,
And all Law Journals,

1790 to 1884

ALL THESE REPORTS
TOPICALLY ARRANGED,
30 Vols., 30,000 pages
—IN—
Myer's Federal Decisions,
for $150.

Adding U. S. Supreme Court to 1891, all for **$180.00**; or
U. S. Supreme Circuit and District to 1891 for **$325.00.**

HERE IS THE SAVING:

The above invaluable Reports, in any other form, when they can be had, cost over

$1,100.

A Beautiful Illustrated Circular

of 64 pages, gives all particulars; sent free.

A NEW BOOK.
A NEW SUBJECT.

VESTED RIGHTS, 1891.

By WM. G. MYER, Editor of "Federal Decisions."

An able discussion of the great principles involved and their practical application.

About 800 pages. Price, post-paid, $6.00.

THREE OTHER GOOD BOOKS

WEBB ON RECORD OF TITLE, Late Edition; $6.00.
MURFREE ON SHERIFFS, $6.00.
MILLS ON EMINENT DOMAIN, $5.00.

GILBERT BOOK CO., St. Louis.